

Poland/National Council of the Judiciary
Полша/Национален съвет на съдебната власт

1. To which group of the classical division of power does the Council belong?

Pursuant to art. 186 of the Constitution of the Republic of Poland, the National Council of the Judiciary of Poland safeguards the independence of courts and judges. Taking into account its personal composition and scope of competences, it can be concluded that it is of a mixed systemic nature.

2. What is the Council's member term of office?

The term of office of an elected Council member has been laid down in art. 187 of the Constitution of the Republic of Poland. Pursuant to the provision of the article in question, the said term of office is four years. Additionally, judges may be appointed for two terms of office at the maximum.

3. Competences, functions, activities and the mission of the Council?

As in the case of question number one, competences, functions, activities and the mission of the Council are laid down in art. 186 of the Constitution of the Republic of Poland and the Act on the National Council of the Judiciary of Poland of 12 May 2011.

The National Council of the Judiciary of Poland safeguards the independence of courts and judges. The Council may put a motion to the Constitutional Tribunal regarding conformity to the Constitution of normative acts to the extent to which they are related to the independence of courts and judges.

Art. 3 of the Act on the National Council of the Judiciary stipulates that the competencies of the Council include:

- 1) considering and evaluating candidacy for holding a post of a judge at the Supreme Court and for holding judicial posts at common courts, administrative courts and military courts;
- 2) presenting to the President of the Republic of Poland applications for appointment of judges of the Supreme Court, common courts, administrative courts and military courts;
- 3) adopting collection of the principles of judges' professional ethics and making sure that they are being abided by;
- 4) expressing a stance on the status of the judicial staff;
- 5) expressing a stance on matters concerning judiciary and judges, put on

the agenda by the President of the Republic of Poland, other public authorities or judiciary self-government;

6) expressing opinion on draft normative acts concerning the judiciary and the judges and presenting applications in this regard;

7) expressing opinion on training programmes as part of general traineeship and judge traineeship, the scope and manner of conducting contests for general traineeship and judge exams;

8) expressing opinion on the annual training timetables within the scope concerning professional training and development of judges and court employees.

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) it appoints the Disciplinary Ombudsmen of common courts' judges and Disciplinary Ombudsmen of military courts' judges;

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

6) it presents the candidacy for the post of the Prosecutor General;

7) it names three members of the Programming Board of the Polish National School of Judiciary and Public Prosecution;

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

9) it proposes two candidates for the post of members of the Council of the Institute of National Remembrance - Commission for the Prosecution of Crimes against the Polish Nation.

According to art. 5, 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 work being carried out by a judge whose individual case is subject to a review by the Council.

The above mentioned activities may not interfere in the independent domain of judges and may be carried out by the Council members or by judges delegated to the Council Office pursuant to separate regulations.

4. Criteria for nominating and appointing members of the Council?

Pursuant to the art. 187 of the Constitution of the Republic of Poland, the National Council of the Judiciary of Poland consists of:

- 1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and an individual appointed by the President of the Republic;
- 2) 15 judges chosen from amongst the judges of the Supreme Court, common courts, administrative courts and military courts;
- 3) 4 members chosen by the Sejm from amongst its Deputies and 2 members chosen by the Senate from amongst its Senators.

As a rule, members of the Council, apart from the ones who hold their posts as a result of their functions, are appointed by the above mentioned bodies.

The National Council of the Judiciary of Poland elects its president and two deputy presidents from among its members.

5. Composition of the Council?

What is the number of judges and the number of persons other than judges?

Out of the total number of twenty five members of the National Council of the Judiciary of Poland, seventeen persons must be judges. Seven members of the National Council of the Judiciary of Poland are not judges. One member of the National Council of the Judiciary of Poland may combine membership in the Council with the performance of his/her duties as a judge, however this is optional, since pursuant to art. 187 of the Constitution of the Republic of Poland, a person appointed by the President for this function does not have to be a judge.

What is the number of judges, prosecutors etc.?

There are no prosecutors in the National Council of the Judiciary of Poland. The Council's counterpart in this respect is the National Council of Prosecutors.

6. Staff:

Number?

Currently the Council staff consists of 67 persons.

Qualifications?

Due to a range of different functions performed by employees of the National Council of Judiciary of Poland Office, it is required that its workers

have different levels of education completed: higher, secondary or primary one, depending on the position of a given person. However, in most cases it is necessary that employees have certain professional experience corresponding to the nature of their work in the National Council of the Judiciary of Poland Office.

7. Structure?

Pursuant to the Act of 12 May 2011, organisational structure of the National Council of the Judiciary of Poland has been determined in articles 15 to 19:

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 commissions from among its members:

- 1) commission for disciplinary liability of the judges, whose task is to analyse the rulings of disciplinary courts, petition the Council to take disciplinary measures, appeal the rulings of disciplinary courts and disciplinary ombudsmen and to make requests to re-commence disciplinary proceedings;
 - 2) budgetary commission, 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 amended²) 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 amended³),
 - 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) commission for visitation and inspection, whose task is to draw up draft resolutions concerning visitations at the court or its organizational unit, inspection at the court or inspection of the judge's work;
 - 4) commission for judges' professional ethics, whose task is to draw up draft resolutions concerning the collection of the principles of judges' professional ethics and observance thereof.
2. The Council may appoint other issue commissions.

The National Council of the Judiciary of Poland Office, hereinafter referred to as the Office, is a body whose aim is to provide administrative,

organisational, legal and financial assistance to the Council in performance of its tasks.

The structure of the National Council of the Judiciary of Poland Office has been laid down in its Regulations, which stipulate that:

The Office is managed by the Head of the National Council of the Judiciary of Poland Office, hereinafter referred to as the Office Head, who is the undersecretary of state, assisted by two deputies and directors of the Office organisational units.

The Office Head and his/her deputies are appointed and dismissed by the President of the National Council of the Judiciary of Poland having consulted opinion of the National Council of the Judiciary of Poland Presidium.

The Office includes in particular:

- 1) Chief Accountant,
- 2) Financial Unit,
- 3) Legal Unit,
- 4) Organisational and Human Resources Unit,
- 5) International Cooperation Unit,
- 6) Administrative and Economic Unit,
- 7) Confidential Information Protection Unit,
- 8) Internal Auditor.

Apart from organisational units and positions listed in paragraph 1, the Office may create teams, sections and independent posts.

Teams, sections and independent posts may form units, as well as directly report to the President of the National Council of the Judiciary of Poland or the Office Head.

Units are headed by directors and teams and sections are run by managers.

Structure and subordination of the organisational units and posts is determined by the President of the National Council of the Judiciary of Poland in accordance with the organisational and staffing needs of the Office.

8. What are other commissions that the Council is made up of?

See answer to question 7.

9. Historic events: establishment of the Council, changes of its structure, functions etc.?

The concept of establishment of a state authority safeguarding the independence of judges and courts, raised in the opinions and legal discussions in the second half of the 1980s, became the subject of considerable and constructive debate during "round table" meeting. Matters concerning independence of courts and the guaranty of the independence of judges were then of utmost political importance and therefore were broadly discussed and

analysed. Political agreement was adopted as a result of works of the subassembly for law and courts reform, which was later approved during plenary session, foreseeing appointment of the National Council of the Judiciary, constitutional authority, composed of representatives of all three authorities - legislative, executive and judiciary - the main task of which was to be co-deciding in judicial personnel issues, dealing with nominations, promotions and transfer of judges, as well as other issues of judiciary and of law and order. The concept of the National Council of the Judiciary undoubtedly followed mainly the Italian and French example; later other post-communist countries followed the idea (e.g. Bulgaria, Croatia, Slovenia, Ukraine and Hungary).

The demand for the establishment of the National Council of the Judiciary, arising from the "round table" agreements, resulted in the amendment to Art. 60 of the Constitution of the People's Republic of Poland of 7 April 1989 on the amendment to the Constitution of the People's Republic of Poland (Dz.U. [Journal of Laws] No 19, item 101). Pursuant to the new wording of that provision, appointment of judges became the prerogative of the President acting at the request of the National Council of the Judiciary. Therefore, as of the entry of the amendment into effect, i.e. 8 April 1989, the National Council of the Judiciary became an element of the supreme state authorities system, whereas the entitlements, compositions and manner of activity thereof were to be specified by the Act. Political status of the Council was maintained also upon the date of entry of the Constitutional Act of 17 October 1992 into effect, on the Mutual Relations between the Legislative and Executive Institutions of the Republic of Poland and on Local Self-government (Dz.U. [Journal of Laws] No 84, item 426 as amended).

The Act on the National Council of the Judiciary was adopted on 20 December 1989 (Dz. U. [Journal of Laws] No 73, item 435 as amended). It was stipulated that the activities of the Council appointed for safeguarding the independence of judges and courts, would include considering candidatures for the post of a judge and presenting thereof to the President with an application for appointment, considering and resolving applications for the transfer of a judge to another post due to the authority of the judge's position, giving consent to further holding of the post by the judge who attained the age of 65, commenting on professional ethical rules for judges, expressing opinions about the proposals concerning changes of the courts organisation and in other matters with respect to the conditions of their functioning, getting acquainted with drafts of normative acts concerning the judiciary, as well as expressing opinions in cases concerning judges and courts, introduced to the agenda by the President, other state authorities and by the general assembly of judges.

The National Council of the Judiciary is a collective authority. It consisted of First President of the Supreme Court, President of the Supreme Court managing works of the Military Chamber of the Supreme Court, President of the Chief Administrative Court and the Minister of Justice - whose membership was tied with holding their posts, as well as two judges of the Supreme Court, judge of the Chief Administrative Court, eleven (initially, until the establishment of courts of appeal - nine) judges of common courts, judge of a military court, four sejm deputies, two senators and a person designated by the President - whose membership resulted from selection or designation.

The first, historic composition of the National Council of the Judiciary was constituted at the first meeting, which took place on 23 February 1990. Members of the Council of the first term of office were: Adam Łopatka (First President of the Supreme Court), gen. Kazimierz Lipiński (President of the Supreme Court managing works of the Military Chamber of the Supreme Court), Adam Zieliński (President of the Chief Administrative Court), Aleksander Bentkowski (Minister of Justice), Józef Mikos and Jan Wasilewski (Supreme Court judges), Jan Semeniuk (judge of the Chief Administrative Court), Jacek Gudowski, Andrzej Konopka, Andrzej Kram, Aleksandra Marszałek, Marianna Muża, Zofia Ślęzak, Janusz Wojciechowski, Jerzy Zawistowski and Stanisław Zimoch (judges of common courts), Marek Kasperczyk (judge of a military court), Janusz Dobrosz, Józef Lubieniecki, Antoni Pieniążek and Edward Rzepka (sejm deputies), Ryszard Juskiewicz and Lech Koziół (senators) and Leszek Kubicki (person designated by the President). A few months later, in relation to changes in the supreme state authorities, resulting from "round table" agreements, and in relation to the establishment of courts of appeal, the members of the Council, in place of the resigning members, became: Adam Strzembosz (First President of the Supreme Court), colonel Janusz Godyń (President of the Supreme Court managing works of the Military Chamber of the Supreme Court) and Jerzy Jasiński (person designated by the President), whereas Jerzy Bączyk and Jerzy Kuźniar were selected from the judges of courts of appeal. In May 1992, Roman Hauser (President of the Chief Administrative Court) joined the composition of the Council.

The first Chairman of the National Council of the Judiciary was Stanisław Zimoch, judge of the Provincial Court in Łódź (later judge of the Court of Appeal in Łódź), and the Deputy chairman was Jan Wasilewski (Supreme Court judge, later the President of the Supreme Court managing works of the Administrative Chamber and the Labour Law, Social Insurance Chamber).

The organisational position of the National Council of the Judiciary was considerably strengthened in relation to the adoption of the Constitution of the Republic of Poland of 2 April 1997. The function of the National Council of the Judiciary - guard of the independence of courts and judges - achieved the rank of

constitutional value (Art. 186 paragraph 1); under the Constitution, this function can be fulfilled as a result of the exclusive right of the Council to submit to the President applications for the appointment to post of judges in courts (Art. 179 read with Art. 144 paragraph 3 item 17) as well as the entitlement to apply to the Constitutional Tribunal with respect to the compliance of normative acts with the Constitution, within the scope in which they concern independence of courts and judges (Art. 186 paragraph 2). The Constitution regulates also the composition of the Council and the authorities thereof (Art. 187 paragraph 1 and 2) and abolished the rule of choosing the Council for the term of office for the benefit of choosing for the term of office particular selected members thereof (Art. 187 paragraph 3).

Under the Act - Law on Common Courts Organisation of 27 July 2001, the National Council of the Judiciary submits to the Minister of Justice an application for preparation of a draft concerning the income and expenditure plan of common courts. Exercising this right results in consistent increase of outlay on common judiciary.

On 19 February 2003 the National Council adopted the Set of professional ethical rules for judges, being statutorily obliged to ensure observance thereof.

Act of 27 July 2001 on the National Council of the Judiciary adjusting legal status to the Constitution provided for the introduction of budgetary autonomy of the Council from 1 January 2004. This date was subsequently altered for 1 January 2007. In November 2006 the National Council of the Judiciary provided a negative opinion on the draft of Sejm deputies, which provided for further postponement of the introduction of budgetary autonomy of the Council to 31 December 2010.

The battle for the budgetary autonomy of the Council was an unexpected success since the Senate of the Republic of Poland rejected the bill of the act of the Sejm, which further postponed introduction of Council's autonomy, the result of which was that from 1 January 2007 Council's income and expenditure constitute a separate part in the budget of the country.¹

10. Current and future important Council project and events?

A number of acts will enter into force in the nearest future, inter alia an amendment to the Act – Law on the system of common courts of law, which has been passed by the Parliament in a legislative procedure affected by a number of

¹ See <http://www.krs.pl/main2.php?node=history&grp=hist&lng=1> and other items form History menu and other menu's: <http://www.krs.pl/main2.php?node=history&mnu=21&lng=1> and <http://www.krs.pl/main2.php?mnu=2&node=oper&submenu=13&lng=1>

both procedural and content-related defects. Shortcomings of the said amendments were widely criticised by both the Council and the majority of the justice community. Their anxieties have been partially shared by constitutional experts. The amendment concerns systemic provisions regulating issues of fundamental importance for the judiciary.

The above mentioned, as well as envisioned (repeated) freezing of the level of judges' salaries, resulting from the departure from the principle of their indexation, are the areas in which we foresee an intensification of the Council works.

11. What are the guaranties for the Council independence?

Independence of the Council is guaranteed by its composition, which allows it to perform all of its functions in an efficient way. The Council composition is of a mixed nature (there are both judges and persons who are not judges). In order to avoid any possible manipulations or illegal pressures, the judges appointed by their peers constitute the Council's vast majority.

12. Budget of the judiciary system?

Independence of the National Council of the Judiciary of Poland results also from its constitutional position and the Act of 12 May 2011 on the National Council of the Judiciary of Poland, which provides for its budgetary self-containment – costs of the activities of the Council are incurred by the state budget, while incomes and expenditures of the Council are recognised as a separate part of the state budget. The part of the budget assigned to the Council is managed by the Council President who submits to the minister competent for the budgetary issues a draft of the plan of incomes and expenditures adopted by the Council for its inclusion in the draft budget act. The National Council of the Judiciary of Poland became independent in terms of its budget only as from 1 January 2007. Before that date, the Council operated as part of the Chancellery of the President of the Republic of Poland and basically had no budget of its own nor competences to manage it.

The current budget of the National Council of the Judiciary of Poland (for the year 2011) amounts to PLN 11,188.00 (that is approximately 2,550.000 EUR).

13. Current composition of the Council:

Beginning/end of the term of office

[Antoni Górski](#)

President of the National Council of the Judiciary of Poland

Supreme Court Judge

Civil Chamber

Term of office from 23 March 2010 till 23 April 2014

President of the National Council of the Judiciary of Poland until 31 March 2010

[Roman Kęska](#)

Deputy President of the National Council of the Judiciary of Poland

Head of the National Council of the Judiciary of Poland Office

Term of office from 18 March 2008 till 18 March 2012

[Ryszard Pęk](#)

Deputy President of the National Council of the Judiciary of Poland

Supreme Administrative Court Judge

President of the Voivodeship Administrative Court in Wrocław

Term of office from 10 February 2008 till 10 February 2012

[Ewa Barnaszewska](#)

President of the Regional Court in Wrocław

Term of office from 20 March 2010 till 20 March 2014

[Łukasz Bojarski](#)

Person appointed by the President of the Republic of Poland

Term of office from 21 September 2010 till 21 September 2014

[Jan Bury](#)

Deputy to the Sejm of the Republic of Poland

Term of office from (lack of sufficient data) till (lack of sufficient data)

[Stanisław Marcin Chmielewski](#)

Deputy to the Sejm of the Republic of Poland

Term of office from 19 December 2007 till 19 December 2011

[Stanisław Dąbrowski](#)

First President of the Supreme Court

Term of office from 19 October 2010 till 19 October 2014

[Andrzej Mikołaj Dera](#)

Deputy to the Sejm of the Republic of Poland

Term of office from 18 March 2008 till (lack of sufficient data)

[Marian Filar](#)

Deputy to the Sejm of the Republic of Poland

Term of office from 19 December 2007 till (lack of sufficient data)

[Barbara Godlewska-Michalak](#)

Judge of the Court of Appeal in Warsaw

Spokesperson of the National Council of the Judiciary of Poland

Term of office from 21 March 2010 till 21 March 2014

[Katarzyna Gonera](#)

Supreme Court Judge

Labour Law, Social Security and Public Affairs Chamber

Term of office from 23 March 2010 till 23 March 2014

[Roman Hauser](#)

President of the Supreme Administrative Court

Term of office from 23 May 2010 till 23 May 2014

[Leon Kieres](#)

Senator

Term of office from 19 November 2009 till (lack of sufficient data)

[Jan Kremer](#)

Judge of the Court of Appeal in Cracow

Term of office from 28 June 2010 till 28 June 2014

[Jarosław Gowin](#)

Minister of Justice

Term of office from 18 November 2011 till 14 October 2015

[Maria Motylska-Kucharczyk](#)

Judge of the Regional Court in Łódź

Term of office from 20 March 2010 till 20 March 2014

[Małgorzata Niezgódka-Medek](#)

Supreme Administrative Court Judge

Term of office from 15 May 2010 till 15 May 2014

[Gabriela Ott](#)

Deputy President of the Regional Court in Katowice

Term of office from 20 March 2010 till 20 March 2014

[Ewa Preneta-Ambicka](#)

President of the Regional Court in Rzeszów

Term of office from 20 March 2010 till 20 March 2014

[Piotr Raczkowski](#)

President of the Garrison Military Court in Warsaw

Term of office from 27 January 2010 till 27 January 2014

[Jarema Sawiński](#)

Judge of the Regional Court in Poznań

Term of office from 15 March 2010 till 15 March 2014

[Piotr Benedykt Zientarski](#)

Senator

Term of office from 20 December 2007 till 20 December 2011

[Janusz Zimny](#)

Judge of the Regional Court in Gdańsk

Term of office from 20 March 2010 till 20 March 2014

[Waldemar Żurek](#)

Judge of the Regional Court in Cracow

Term of office from 20 March 2010 till 20 March 2014