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**The Act of 30 November 2016**  
**on the Organisation of the Constitutional Tribunal**  
**and the Mode of Proceedings Before the Constitutional Tribunal**

PART I  
**The Organisation of the Constitutional Tribunal**

Chapter 1  
**General provisions**

**Article 1**

The Constitutional Tribunal of the Republic of Poland, hereinafter referred to as ‘the Tribunal’, shall be an organ of the judiciary, established to exercise powers laid down in the Constitution and statutes.

**Article 2**

The Tribunal shall have its seat in the capital city of Warsaw.

**Article 3**

The Constitutional Tribunal shall be composed of 15 judges.

**Article 4**

A separate statute shall specify:

- 1) the commencement, scope and termination of the employment relationship of a judge of the Tribunal;
- 2) the rights and duties of a judge of the Tribunal;
- 3) matters pertaining to the immunity, personal inviolability, and disciplinary responsibility of a judge of the Tribunal;
- 4) the rights and duties of a retired judge of the Tribunal.

## Chapter 2

### **The organs of the Tribunal**

#### **Article 5**

The following shall have the status of the organs of the Tribunal:

- 1) the General Assembly of the Judges of the Tribunal, hereinafter referred to as ‘the General Assembly’;
- 2) and the President of the Tribunal.

#### **Article 6**

1. The General Assembly shall comprise the incumbent judges of the Tribunal who have taken the oath of office before the President of the Republic of Poland.

2. The General Assembly shall be competent to:

- 1) approve the report referred to in Article 13(1);
- 2) present candidates for the positions of the President and Vice-President of the Tribunal;
- 3) consent to a judge of the Tribunal being held criminally liable and deprived of liberty, under rules laid down in separate provisions;
- 4) determine the expiry of the mandate of a judge of the Tribunal, under rules laid down in separate provisions;
- 5) retire a judge of the Tribunal who is permanently incapable of performing the duties of a judge of the Tribunal, under rules laid down in separate provisions;
- 6) determine that a judge of the Tribunal has lost his/her status as a retired judge of the Tribunal, under rules laid down in separate provisions;
- 7) adopt the rules of procedure of the Tribunal;
- 8) adopt the rules and regulations of the Chancellery of the Tribunal as well as the rules and regulations of the Office of the Legal Service of the Tribunal;
- 9) adopt a draft estimate of revenue and expenditure of the Tribunal;
- 10) adopt the Code of Ethics for the Judges of the Tribunal;
- 11) carry out other tasks assigned to the General Assembly in other statutes and the rules of procedure of the Tribunal.

#### **Article 7**

1. The General Assembly shall deliberate at sittings.

2. A sitting of the General Assembly, with the exception of sittings referred to in Article 11, shall be convened by the President of the Tribunal, who shall determine the agenda of the sitting and shall preside over the deliberations of the Assembly.

3. The President of the Tribunal shall notify the judges of the Tribunal about the date and agenda of the sitting of the General Assembly no later than 7 days prior to the date of the sitting.

4. In duly justified cases, the President of the Tribunal may depart from the time-limit referred to in para 3.

### **Article 8**

1. The General Assembly shall adopt resolutions by an absolute majority vote, in the presence of at least two-thirds of the total number of the judges of the Tribunal, unless a relevant statute provides otherwise.

2. The adoption of a resolution by the General Assembly shall require the presence of the President of the Tribunal, except in the case of a resolution referred to in Article 11(14).

3. The vote shall not be by secret ballot, provided that none of the judges of the Tribunal requests otherwise. A vote by secret ballot shall be held with regard to matters referred to in Article 6(2), points 2 to 6.

### **Article 9**

1. Once a year the President of the Tribunal shall convene a public sitting of the General Assembly during which significant issues arising from the activity and jurisprudence of the Tribunal shall be discussed; the said issues shall be presented in the report referred to in Article 13(1).

2. The President of the Tribunal shall notify about convening the public sitting of the General Assembly and shall invite, in particular, the following guests: the President of the Republic of Poland, the Marshal of the Sejm, the Marshal of the Senate, the representatives of public authorities referred to in Article 13(3), as well as the chairpersons of competent Sejm and Senate committees.

### **Article 10**

1. The President of the Tribunal shall be appointed by the President of the Republic of Poland from among candidates proposed by the General Assembly, in accordance with the procedure set out in Article 11.

2. The term of office of the President of the Tribunal shall be six years.

3. The term of office of the President of the Tribunal shall expire before the lapse of six years due to:

1) the end of the term of office in the case of a judge of the Tribunal appointed to the position of the President of the Tribunal; or

2) the expiry of the mandate of the said judge before the end of his/her term of office, under rules specified in separate provisions; or

3) the resignation of the said judge from the position of the President of the Tribunal.

4. The re-appointment of the said judge to the position of the President of the Tribunal shall be inadmissible.
5. The term of office of the Vice-President of the Tribunal shall expire where s/he is appointed to the position of the President of the Tribunal. With regard to the Vice-President of the Tribunal, the provisions of paras 1-4 shall be applied accordingly.

### **Article 11**

1. Candidates for the position of the President of the Tribunal shall be presented to the President of the Republic of Poland by the General Assembly, within one month from the date when the vacancy occurred.
2. From the date when the vacancy occurred until the moment of appointing the President of the Tribunal, the work of the Tribunal shall be managed by a judge of the Tribunal whose total period of work experience is the longest:
  - 1) as a judge of the Tribunal;
  - 2) as a legal trainee, an assistant judge, a judge in a common court;
  - 3) in the central state administration.
3. The judge of the Tribunal referred to in para 2 shall convene a sitting of the General Assembly for the purpose of presenting candidates for the position of the President of the Tribunal as well as shall notify the other judges of the Tribunal about the date and agenda of the sitting of the General Assembly no later than 7 days prior to the date of the sitting.
4. The deliberation of the General Assembly, convened for the purpose specified in para 3, shall be presided over by the least senior judge among the judges of the Tribunal.
5. The sitting of the General Assembly on the presentation of candidates for the position of the President of the Tribunal shall be attended by all the judges of the Tribunal who, prior to that sitting of the General Assembly, took the oath of office before the President of the Republic of Poland.
6. Candidates for the position of the President of the Tribunal shall be selected in a vote carried out by the General Assembly, under the rules set out in paras 7-14.
7. Every judge of the Tribunal referred to in para 5 may propose him/herself as a candidate in the procedure for selecting candidates for the position of the President of the Tribunal. The proposals shall be lodged with the judge of the Tribunal referred to in para 2 from the day of notification about the date of the sitting of the General Assembly, referred to in para 3, until the beginning of the sitting.
8. The first and last names of the judges of the Tribunal provided in accordance with para 7 shall be included in a relevant ballot paper in alphabetical order. Candidates shall be selected in one round of voting. A single vote shall be valid when the symbol of “x” or “+” (two crossed

lines) has been marked on the ballot paper next to the last name of one judge of the Tribunal.

9. A template of the ballot paper referred to in para 8 shall be specified in the rules of procedure of the Tribunal.

10. All judges of the Tribunal who have received at least 5 votes each in the vote referred to in para 8 shall be presented as candidates for the position of the President of the Tribunal by the General Assembly.

11. Where only one judge of the Tribunal has received the requisite number of votes specified in para 10, the General Assembly shall present as the other candidate for the position of the President of the Tribunal: the judge of the Tribunal who has received the largest number of votes among the judges of the Tribunal who have not received the requisite number of at least 5 votes.

12. Where, in the situation specified in para 11, there is more than one judge of the Tribunal who has received the largest number of votes among the judges of the Tribunal who have not received the number of votes required in para 10, the General Assembly – including the judge of the Tribunal who has received at least 5 votes – shall present all the judges of the Tribunal who have received the same highest number of votes, to be considered as candidates for the position of the President of the Tribunal.

13 Where the application of the procedure laid down in paras 7-12 does not result in selecting at least two judges of the Tribunal, the vote shall be repeated. Should the repeated vote fail to reveal at least two judges of the Tribunal, the procedure for presenting the President of the Republic of Poland with candidates for the position of the President of the Tribunal shall be commenced anew.

14. After holding the vote and determining the number and names of the candidates, the General Assembly shall adopt a resolution on the presentation of the selected judges of the Tribunal as candidates for the position of the President of the Tribunal; the resolution shall be provided forthwith to the President of the Republic of Poland.

15. With regard to the Vice-President of the Tribunal, the provisions of paras 1-14 shall be applied accordingly.

## **Article 12**

1. The President of the Tribunal shall:

- 1) manage the work of the Tribunal;
- 2) represent the Tribunal in relations with other authorities or entities;
- 3) perform other duties specified in relevant statutes and the rules of procedure of the Tribunal.

2. The President of the Tribunal shall specify – by means of a written authorisation – to what extent the Vice-President will stand in for him/her within the scope of matters referred to in para 1.

3. In particular situations, the President of the Tribunal may authorise a different judge of

the Tribunal to exercise some of his/her competence referred to in para 1.

4. Where there is no possibility of authorising the Vice-President or another judge of the Tribunal to exercise some of the powers specified in para 1, the duties of the President of the Tribunal shall be taken over by the judge referred to in Article 11(2).

### **Article 13**

1. The President of the Tribunal shall provide the Sejm and the Senate with an annual report presenting information on significant issues arising from the activity and jurisprudence of the Tribunal.

2. The report referred to in para 1 shall not be subject to a vote in the Sejm and the Senate.

3. The report referred to in para 1 shall be provided by the President of the Tribunal to the following authorities: the President of the Republic of Poland, the Prime Minister, the First President of the Supreme Court, the President of the Supreme Administrative Court, the President of the National Council of the Judiciary of Poland, the Public Prosecutor-General and the Minister of Justice, the Ombudsman<sup>1</sup>, the Ombudsman for Children, the President of the Supreme Audit Office, the President of the National Council of Radio and Television Broadcasting, as well as the President of the National Bank of Poland.

### **Article 14**

1. A draft estimate of revenue and expenditure of the Tribunal, referred to in Article 6(2)(9), shall be incorporated into a draft State Budget by a competent minister responsible for public finance.

2. As regards the execution of the Tribunal's budget, the President of the Tribunal shall be vested with powers of a competent minister responsible for public finance.

### **Article 15**

1. The rules of procedure of the Tribunal shall specify the following:

- 1) rules for the internal organisation of the work of the General Assembly;
- 2) rules for the internal organisation of work carried out by the President of the Tribunal;
- 3) requirements concerning the seal of the Tribunal;
- 4) court-dress requirements for the judges of the Tribunal;
- 5) the template of the ballot card within the scope of the procedure for selecting candidates by the General Assembly for the position of the President and Vice-President of the Tribunal;
- 6) the internal procedure for processing submissions and case files;
- 7) internal rules for carrying out a deliberation;
- 8) internal rules for preparing and carrying out a hearing or a sitting in camera;

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<sup>1</sup> [the translator's note: whenever in this text the term 'the Ombudsman' is used, it solely refers to the Ombudsman, and never to 'the Ombudsman for Children'; the latter term is consistently rendered throughout the text, without any variation or abbreviation, as 'the Ombudsman for Children'.]

9) rules for drafting statements of reasons for rulings;

10) other matters referred to in the Act.

2. The President of the Tribunal shall order the publication of the rules of procedure of the Tribunal in the Official Gazette of the Republic of Poland – *Monitor Polski*.

### Chapter 3

## **The Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal**

### Section 1

#### **Common provisions**

#### **Article 16**

1. The organisational units within the Tribunal shall be as follows:

- 1) the Chancellery of the Tribunal;
- 2) the Office of the Legal Service of the Tribunal.

2. The organisational units referred to in para 1 shall be subordinate to the President of the Tribunal.

#### **Article 17**

Measures within the remit of labour law with regard to the employees of the organisational units referred to in Article 16(1) shall be taken by the President of the Tribunal or a person authorised by the said President.

### Section 2

#### **The Chancellery of the Tribunal**

#### **Article 18**

1. The Chancellery of the Tribunal shall provide organisational and administrative conditions for the work of the Tribunal.

2. The Chancellery of the Tribunal shall comprise:

- 1) the Director of the Chancellery of the Tribunal;
- 2) the Administrative Department;
- 3) the Security Department.

3. The detailed scope of the tasks of the Chancellery and the organisational structure thereof shall be specified in the rules and regulations of the Chancellery of the Tribunal.

## **Article 19**

1. The Chancellery of the Tribunal shall be managed by the Director of the said Chancellery, who shall be appointed and dismissed by the President of the Tribunal upon consultation with the General Assembly.
2. The Director of the Chancellery of the Tribunal shall be the supervisor of the employees of the Chancellery, shall guarantee the proper functioning of the Chancellery and, where necessary, s/he shall submit motions to the President of the Tribunal with regard to matters pertaining to the organisation of the Chancellery.
3. The Director of the Chancellery shall prepare a draft estimate of revenue and expenditure of the Tribunal and shall provide it to the President of the Tribunal; the said Director shall be responsible for the execution of the budget of the Tribunal.
4. The Director of the Chancellery of the Tribunal shall be responsible for the use of assets that are managed by the Tribunal.
5. The detailed scope of responsibilities assigned to the Director of the Chancellery of the Tribunal and the manner of fulfilling those responsibilities shall be laid down in the rules and regulations of the Chancellery of the Tribunal.

## **Article 20**

1. The employees of the Chancellery of the Tribunal who hold administrative positions shall make up the Administrative Department.
2. Upon consultation with the Director of the Chancellery of the Tribunal, the President of the Tribunal shall issue an order to specify:
  - 1) the number and list of positions held by the employees referred to in para 1;
  - 2) qualification requirements related to the positions referred to in para 1;
  - 3) the detailed scope of responsibilities assigned to the positions referred to in para 1 as well as the manner and terms of fulfilling those responsibilities.

## **Article 21**

1. The employees of the Chancellery of the Tribunal holding positions related to safeguarding the security of the Tribunal shall make up the Security Department of the Tribunal.
2. Upon consultation with the Director of the Chancellery of the Tribunal, the President of the Tribunal shall issue an order to specify:
  - 1) the number and list of positions held by the employees referred to in para 1;
  - 2) qualification requirements related to the positions referred to in para 1;



- 3) the type of uniforms for the security guards of the Tribunal;
- 4) the detailed scope of responsibilities assigned to the positions referred to in para 1 as well as the manner and terms of fulfilling those responsibilities.

### **Article 22**

1. The President of the Tribunal shall – by issuing an order – determine the terms of remuneration for the employees of the Chancellery of the Tribunal, which will comprise the terms of remuneration for:

- 1) the Director of the Chancellery of the Tribunal;
- 2) the employees of the Administrative Department;
- 3) the employees of the Security Department.

2. The remuneration of the Director of the Chancellery of the Tribunal may not exceed the basic remuneration granted to the director of a court of appeal, which is specified in executive provisions issued on the basis of Article 32c(3) of the Act of 27 July 2001 on the Organisational Structure of Common Courts (Journal of Laws – Dz. U. of 2015 item 133, as amended<sup>2</sup>).

### **Article 23**

In matters not regulated by the Act, the employees of the Chancellery of the Tribunal shall be subject to the provisions of the Act of 16 September 1982 on the Employees of State Offices (Journal of Laws – Dz. U. of 2016, item 1511).

### Section 3

### **The Office of the Legal Service of the Tribunal**

### **Article 24**

1. The Office of the Legal Service of the Tribunal shall provide support as to the subject-matter of the judicial activity of the Tribunal and assistance within that scope to the judges of the Tribunal.

2. The Office of the Legal Service of the Tribunal shall comprise:

- 1) the Director of the Office of the Legal Service of the Tribunal;
- 2) assistants to the judges of the Tribunal;
- 3) the Department of the Preliminary Verification of Submissions Instituting Proceedings

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<sup>2</sup> Changes in the consolidated text of the above-mentioned Act were published in the Journal of Laws – Dz. U. of 2015, items 509, 694, 1066, 1224, 1309, 1311, 1418, 1595 and 1781 as well as of 2016 items 147, 437, 633, 960 and 1579.

Before the Tribunal (hereinafter: ‘the Verification Department’);

4) The Department of Jurisprudence Research and Legal Analyses (hereinafter: ‘the Research Department’).

3. The detailed scope of tasks assigned to the Office of the Legal Service of the Tribunal and the organisational structure thereof shall be specified in the rules and regulations of the Office of the Legal Service of the Tribunal.

#### **Article 25**

1. The Office of the Legal Service of the Tribunal shall be managed by the Director of the said Office, who shall be appointed and dismissed by the President of the Tribunal upon consultation with the General Assembly.

2. Responsibilities assigned to the Director of the Office of the Legal Service of the Tribunal and the manner of fulfilling those responsibilities, within the scope not regulated by the Act, shall be specified in the rules and regulations of the Office of the Legal Service of the Tribunal.

#### **Article 26**

1. An assistant to a judge of the Tribunal shall carry out activities aimed at preparing cases for consideration by the Tribunal and tasks falling within the scope of the administrative activity of the Tribunal.

2. An assistant to a judge of the Tribunal shall be a person who meets the following criteria:

1) is a citizen of the Republic of Poland and exercises all civil rights;

2) is of impeccable character;

3) has completed legal studies in Poland and has been awarded an MA degree in Law, or has studied abroad and received an equivalent degree.

3. Assistants shall be selected in the course of a recruitment process aimed at finding persons with necessary qualifications for the performance of responsibilities assigned to the position of an assistant to a judge of the Tribunal.

4. The recruitment process referred to in para 3 shall be coordinated by the President of the Tribunal.

5. The terms and stages of the recruitment process referred to in para 3 shall be specified by the President of the Tribunal by issuing an order, upon consultation with the Director of the Office of the Legal Service of the Tribunal.

6. The President of the Tribunal shall provide information about the recruitment process referred to in para 3 in the Public Information Bulletin of the Constitutional Tribunal.

7. Upon consultation with the Director of the Office of the Legal Service of the Tribunal, the President of the Tribunal shall issue an order to specify:

- 1) the number of assistants to the judges of the Tribunal;
- 2) additional qualifications required for the positions referred to in para 1;
- 3) the detailed scope of responsibilities assigned to the position of an assistant to a judge of the Tribunal as well as the manner and terms of fulfilling those responsibilities.

#### **Article 27**

1. The Verification Department shall provide assistance to the judges of the Tribunal within the scope specified in Part II, Chapter 7, Section 3.
2. The detailed scope of the tasks of the Verification Department and the organisational structure thereof shall be specified in the rules and regulations of the Office of the Legal Service of the Tribunal.

#### **Article 28**

1. An employee of the Verification Department shall be a person who meets the following criteria:

- 1) is a citizen of the Republic of Poland and exercises all civil rights;
- 2) is of impeccable character;
- 3) has completed legal studies in Poland and has been awarded an MA degree in Law, or has studied abroad and received an equivalent degree.

2. Upon consultation with the Director of the Office of the Legal Service of the Tribunal shall issue an order to specify:

- 1) the number and list of positions held by the employees referred to in para 1;
- 2) additional qualifications required for the positions referred to in para 1;
- 3) the detailed scope of responsibilities assigned to the positions referred to in para 1 as well as the manner and terms of fulfilling those responsibilities.

#### **Article 29**

1. The Research Department shall provide support, by means of scholarly consultation, within the scope of the adjudication process in the Tribunal and shall perform tasks to ensure that the jurisprudence of the Tribunal complies with the law as well as is cohesive and consistent.
2. The detailed scope of the tasks of the Research Department and the organisational structure thereof shall be specified in the rules and regulations of the Office of the Legal Service of the Tribunal.

### **Article 30**

1. An employee of the Research Department shall be a person who meets the following criteria:

- 1) is a citizen of the Republic of Poland and exercises all civil rights;
- 2) is of impeccable character;
- 3) has completed legal studies in Poland and has been awarded an MA degree in Law, or has studied abroad and received an equivalent degree, as well as holds at least a PhD in Law.

2. Upon consultation with the Director of the Office of the Legal Service of the Tribunal, the President of the Tribunal shall issue an order to specify:

- 1) the number and list of positions held by the employees referred to in para 1;
- 2) additional qualifications required for the positions referred to in para 1;
- 3) the detailed scope of responsibilities assigned to the positions referred to in para 1 as well as the manner and terms of fulfilling those responsibilities.

### **Article 31**

1. The President of the Tribunal shall – by issuing an order – determine the terms of remuneration for the employees of the Office of the Legal Service of the Tribunal, which will comprise the terms of remuneration for:

- 1) the Director of the Office of the Legal Service of the Tribunal;
- 2) assistants to the judges of the Tribunal;
- 3) the employees of the Verification Department;
- 4) the employees of the Research Department.

2. The remuneration of the Director of the Office of the Legal Service of the Tribunal may not exceed the basic remuneration granted to the director of a court of appeal, which is specified in executive provisions issued on the basis of Article 32c(3) of the Act of 27 July 2001 on the Organisational Structure of Common Courts.

### **Article 32**

In matters not regulated in the Act, the employees of the Office of the Legal Service of the Tribunal shall be subject to the provisions of the Act of 18 December 1998 on the Employees of Courts and Public Prosecution Offices (Journal of Laws – Dz. U. of 2015, item 1241, and of 2016, items 178 and 394).

PART II  
**Proceedings before the Tribunal**

Chapter 1  
**General provisions**

**Article 33**

1. The Tribunal shall adjudicate on the conformity of:

- 1) statutes and international agreements to the Constitution;
- 2) statutes to ratified international agreements whose ratification required prior consent granted by statute;
- 3) legal provisions issued by central state authorities<sup>3</sup> to the Constitution, ratified international agreements and statutes.

2. The Tribunal shall adjudicate on the conformity to the Constitution of a statute or another normative act challenged in a constitutional complaint referred to in Article 79(1) of the Constitution.

3. The Tribunal shall adjudicate on the conformity to the Constitution, ratified international agreements or a statute of a normative act challenged in a question of law referred to in Article 193 of the Constitution.

4. The Tribunal shall adjudicate on the conformity to the Constitution of the purposes or activities of political parties.

5. The Tribunal shall settle disputes over powers between central constitutional state authorities.

6. The Tribunal shall determine whether or not there exists an impediment to the exercise of the office by the President of the Republic of Poland. If the Tribunal so finds, it shall require the Marshal of the Sejm to temporarily perform the duties of the President of the Republic of Poland.

**Article 34**

Whenever in the Act the term ‘statute’ is used, it shall also denote normative acts referred to in Article 234 of the Constitution, as well as other normative acts issued on the basis of provisions

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<sup>3</sup> [the translator’s note: the Polish term ‘*organy*’ is rendered in the English translation of the Polish Constitution as ‘organs’, but the Polish term is much broader and covers not only competent bodies but also certain competent individual officials (e.g. the President of the Republic of Poland, the Prime Minister, as well as others), and thus in this translation the Polish term is, in a number of instances, rendered more broadly as ‘authorities’.]

that were binding prior to the entry into force of the Constitution of 1997, provided that those acts had the force of statute.

### **Article 35**

1. The Tribunal shall notify the Sejm and the Senate, as well as other law-making bodies, about any inconsistencies and gaps in the law which need to be eliminated to ensure the coherence of the legal system of the Republic of Poland.

2. The President of the Tribunal may request the addressee of such notification to inform the Tribunal about the addressee's stance on issues signalled in the notification.

### **Article 35a**

1. The Tribunal shall be the controller of personal data processed within the scope of its proceedings.

2. With regard to the processing of personal data in proceedings conducted by the Tribunal, the following provisions shall not be applicable: Article 15, Article 16 – insofar as special provisions regulate a separate procedure for rectifying inaccurate personal data – as well as Article 18 and Article 19 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, pp. 1–88, as amended; hereinafter: 'the Regulation (EU) 2016/679').

3. With relation to the processing of personal data in the course of proceedings conducted by the Tribunal, the performance of duties referred to in Article 13 of the Regulation (EU) 2016/679 is carried out by providing information referred to in Article 13(2) of the Regulation (EU) 2016/679 in the Public Information Bulletin of the Constitutional Tribunal as well as by displaying the said information in the building of the Tribunal in an easily visible manner.

### **Article 35b**

1. The Tribunal's processing of personal data in the course of its proceedings shall be supervised by the National Council of the Judiciary.

2. With regard to the supervision referred to in para 1, the following shall be applied accordingly: the provisions of Article 175dd(2) and (3) as well as the provisions of Part I, Chapter 5a of the Act of 27 July 2001 on the Organisational Structure of Common Courts.

## **Article 36**

Within the scope not regulated in the Act, as regards proceedings before the Tribunal, the provisions of the Act of 17 November 1964 – the Civil Procedure Code shall be applied accordingly (Journal of Laws – Dz. U. of 2016, items 1822 and 1823).

### Chapter 2

## **Adjudicating benches**

## **Article 37**

1. The Tribunal shall adjudicate:

1) sitting as a full bench in cases concerning:

a) disputes over powers between central constitutional state authorities;

b) the existence of an impediment to the exercise of the office by the President of the Republic and the assignment of the temporary performance of the said President's duties to the Marshal of the Sejm;

c) the conformity to the Constitution of the purposes or activities of political parties;

d) the conformity to the Constitution of bills adopted by the Polish Parliament before they are signed by the President of the Republic of Poland or international agreements before their ratification;

e) matters that are particularly complex, upon motion by the President of the Tribunal alone, as well as when a motion for a case to be deemed particularly complex is filed by an adjudicating bench assigned for the consideration of the case, or in circumstances where particular complexity is linked with expenditure not provided for in the State Budget Act, and in particular when the adjudicating bench intends to depart from a stance taken previously in a ruling issued by a full bench of the Tribunal;

2) sitting as a bench of five judges of the Tribunal in cases concerning:

a) the conformity of statutes and international agreements to the Constitution;

b) the conformity of statutes to international agreements whose ratification required prior consent granted by statute;

3) sitting as a bench of three judges of the Tribunal in cases concerning:

a) the conformity of other normative acts to the Constitution, ratified international agreements, and statutes;

b) appeals against decisions on refusal to proceed with applications filed by authorities referred to in Article 191(1), points 3 to 5, of the Constitution as regards the conformity of normative acts to the Constitution, ratified international agreements, or statutes;

c) appeals against decisions on refusal to proceed with constitutional complaints;

d) the exclusion of a judge of the Tribunal from the Tribunal's consideration of a case for reasons set out in Article 39(2);

4) sitting as a single judge in cases concerning decisions on refusal to proceed with constitutional complaints as well as with applications filed by authorities referred to in Article 191(1), points 3 to 5, of the Constitution as regards the conformity of normative acts to the Constitution, ratified international agreements, or statutes.

2. The consideration of a case by a full bench of the Tribunal shall require the participation of at least 11 judges of the Tribunal. A hearing attended by a full bench of the Tribunal shall be presided over by the President of the Tribunal, and where there are grounds preventing the said person from presiding – a judge of the Tribunal designated by the President of the Tribunal.

### **Article 38**

1. The composition of an adjudicating bench, including a presiding judge and a judge rapporteur, shall be indicated by the President of the Tribunal in alphabetical order, taking account of the category, number and order of various applications received by the Tribunal.

2. The President of the Tribunal may designate a judge rapporteur by bypassing the requirement in para 1, if this is justified, particularly by the subject-matter of a case under consideration.



## Chapter 3

### **The exclusion of a judge of the Tribunal from the Tribunal's consideration of a case**

#### **Article 39**

1. A judge of the Tribunal shall be excluded from the Tribunal's consideration of a case if s/he:

1) issued a normative act that is the subject of an application, a question of law or a constitutional complaint;

2) issued a ruling, an administrative decision, or another determination with relation to a question of law or a constitutional complaint;

3) is a participant in proceedings or is linked with a participant in proceedings by such a legal relationship that the outcome of the case may affect the judge's rights and duties;

4) was a representative, attorney or adviser of a participant in proceedings;

5) is a party to proceedings in which a question of law has been lodged with the Tribunal, or where a party to proceedings is the judge's spouse, a person related to the judge by blood or affinity in a direct line, or a person related collaterally to the judge by blood up to the fourth degree or by affinity up to the second degree.

2. A judge of the Tribunal shall also be excluded from the Tribunal's consideration of a case if s/he:

1) participated in the issuing of a normative act, a judgment, an administrative decision, or another determination, which are referred to in para 1(1) and (2), and this may raise doubts as to the judge's impartiality;

2) there are other circumstances, not enumerated in point 1 or para 1, which may raise doubts as to the impartiality of the judge.

3. In the situations referred to in para 2, a judge of the Tribunal shall be excluded from the Tribunal's consideration of a case, if it is deemed probable that there are circumstances which may raise doubts as to the impartiality of the judge.

#### **Article 40**

1. A judge of the Tribunal shall forthwith notify the President of the Tribunal about any circumstances that may cause the judge's exclusion from the Tribunal's consideration of a case.

2. Until it is determined whether a judge of the Tribunal is to be excluded from the Tribunal's consideration of a case, the said judge may only perform urgent duties.

## **Article 41**

1. A judge of the Tribunal shall be excluded from the Tribunal's consideration of a case: *ex officio*; upon the judge's request; or upon a justified request by a participant in proceedings.
2. The exclusion of a judge of the Tribunal for reasons specified in Article 39(1) shall be determined by the President of the Tribunal, by issuing a decision.
3. The exclusion of a judge of the Tribunal for reasons specified in Article 39(2) shall be determined by the Tribunal, by issuing a decision.

## Chapter 4

### **Participants in proceedings**

## **Article 42**

The following shall be participants in proceedings before the Tribunal:

- 1) an applicant that has filed an application (hereinafter: 'an applicant');
- 2) a complainant who has lodged a constitutional complaint (hereinafter: 'a complainant');
- 3) an authority that has issued a normative act which is the subject of an application, a question of law or a constitutional complaint; or the State Treasury Solicitors' Office, if the Council of Ministers has designated the State Treasury Solicitors' Office to represent the said Council or ministers in proceedings before the Tribunal;
- 4) a court that has referred a question of law to the Tribunal, if the court has notified about its participation in proceedings instituted by the submission of the question of law, and has designated an authorised representative from among the judges of the court;
- 5) an organ of a political party specified in the party's rules and regulations, in cases concerning the conformity to the Constitution of the purposes or activities of political parties;
- 6) a central constitutional state authority involved in a dispute over powers;
- 7) the Public Prosecutor-General;
- 8) the Sejm, the President of the Republic of Poland, and a competent minister responsible for foreign affairs, in cases concerning the conformity to the Constitution of international agreements ratified in accordance with Article 89(1) as well as Article 90(2) and (3) of the Constitution;

9) the President of the Republic of Poland and a competent minister responsible for foreign affairs, in cases concerning the conformity to the Constitution of other ratified international agreements;

10) the Ombudsman, upon notifying the Tribunal of his/her participation in proceedings;

11) the Ombudsman for Children, upon notifying the Tribunal of his/her participation in proceedings instituted by an application filed by the Ombudsman or in proceedings concerning a constitutional complaint, where the rights of the child are discussed;

12) authorities mentioned in Article 45(1), in cases concerning the existence of an impediment to the exercise of the office by the President of the Republic of Poland and the assignment of the temporary performance of the said President's duties to the Marshal of the Sejm.

### **Article 43**

1. Participants in proceedings before the Tribunal shall represent themselves or shall be represented by an authorised representative or attorney.

2. A court referring a question of law may only be represented by a judge of the bench adjudicating in a case in the context of which the question of law has been lodged.

3. Cases considered by a full bench of the Tribunal shall require the participation of the Public Prosecutor-General or his/her deputy; whereas in cases where a smaller panel of judges adjudicates – the Public Prosecutor-General may be represented by a prosecutor from the National Prosecution Office or a prosecutor from another organisational unit of the public prosecution service who has been delegated to perform tasks in the National Prosecution Office and has been designated by the Public Prosecutor-General or his/her deputy to be involved in those cases.

4. The Sejm, the Marshal of the Sejm and a group of Sejm Deputies may only be represented by Sejm Deputies. A group of Sejm Deputies and the Marshal of the Sejm, if they are applicants, may designate, apart from the said representatives, no more than two attorneys who are not Sejm Deputies.

5. The Senate, the Marshal of the Senate and a group of Senators may only be represented by Senators. A group of Senators and the Marshal of the Senate, if they are applicants, may designate, apart from the said representatives, no more than two attorneys who are not Senators.

6. The representatives of the authorities referred to in paras 4 and 5 may be accompanied by no more than two employees of the Chancellery of the Sejm and the Chancellery of the Senate.

### **Article 44**

1. Within the scope of the preparation and submission of a constitutional complaint and an appeal against a decision on refusal to proceed with the complaint as well as with regard to

the legal representation of the complainant in proceedings before the Tribunal, there is a requirement that the complainant shall be represented before the Tribunal by an advocate or a legal adviser, unless the complainant is a judge, a public prosecutor, an advocate, a legal adviser, a notary public, a professor of law, or a scholar with a post-PhD degree in Law (Pl. *doctor habilitowany*).

2. Where the complainant cannot cover the costs of legal representation, the said complainant may file a request with the district court of his/her place of residence for an advocate or a legal adviser to be appointed by the court.

3. The submission of the request referred to in para 2 shall suspend the time-limit for the submission of the constitutional complaint. The said time-limit shall begin to run again on the first day after the date when:

1) an advocate or a legal adviser is served with a decision of a competent authority that s/he has been appointed an attorney for the complainant;

2) a court decision dismissing the request for court-appointed legal representation becomes legally effective;

3) the complainant is served with a decision which dismisses an appeal against the decision dismissing the request for court-appointed legal representation.

#### **Article 45**

1. The following authorities shall participate in person in a hearing to determine the existence of an impediment to the exercise of the office by the President of the Republic: the Marshal of the Sejm, the Marshal of the Senate, the First President of the Supreme Court, the Public Prosecutor-General, and the Head of the Chancellery of the President of the Republic of Poland.

2. Should the participants in proceedings referred to in para 1 be unable to attend a hearing in person, they may designate their representatives.

3. The representatives referred to in para 2 shall be as follows:

1) the Marshal of the Sejm may be represented by a Vice-Marshal of the Sejm s/he has designated;

2) the Marshal of the Senate may be represented by a Vice-Marshal of the Senate s/he has designated;

3) the First President of the Supreme Court may be represented by a President of the Supreme Court s/he has designated;

4) the Public Prosecutor-General may be represented by a deputy of the Public Prosecutor-General s/he has designated;

5) the Head of the Chancellery of the President of the Republic of Poland may be represented by a deputy of the Head of the said Chancellery s/he has designated.

Chapter 5  
**Procedural documents**

**Article 46**

Procedural documents shall comprise the applications, questions of law, constitutional complaints as well as other submissions and statements of participants in proceedings, lodged with the Tribunal, outside a hearing, in the course of the proceedings.

**Article 47**

1. An application filed by one of the authorities referred to in Article 191(1), points 1 to 5, of the Constitution shall comprise:

- 1) the indication of the authority that is competent to lodge the application;
- 2) the indication of the legal basis for action taken by the authority that is competent to lodge the application;
- 3) the indication of the type of a procedural document;
- 4) the indication of a challenged normative act, or part thereof;
- 5) the indication of a higher-level norm for the review;
- 6) justification for the application.

2. The justification referred to in para 1(6) shall comprise the following information:

- 1) the wording of a provision challenged in the application, followed by the interpretation thereof;
- 2) the wording of higher-level norms for the review, followed by the interpretation thereof;
- 3) the formulation of a constitutional issue and an allegation about unconstitutionality;
- 4) the indication of arguments or evidence in support of the allegation about unconstitutionality.

3. An application lodged by a group of Sejm Deputies or Senators shall be supplemented with a list of Sejm Deputies or Senators who support the application, signed by those Deputies or Senators.

## **Article 48**

1. An application lodged by one of the authorities referred to in Article 191(1), points 3 to 5, of the Constitution should also:

- 1) justify, by citing a provision of law or a provision of rules and regulations, that a challenged normative act, or part thereof, concerns matters within the scope of the applicant's activity;
- 2) and in the context of the authorities referred to in Article 191(1)(4) of the Constitution, cite a provision of law or a provision of rules and regulations which indicates that the applicant is a nation-wide authority.

2. The application referred to in para 1 shall be supplemented with:

- 1) a resolution or another determination issued by an authority referred to in Article 191(1), points 3 to 5, of the Constitution, which constitutes a basis for lodging the application and which specifies the challenged normative act, or part thereof, and indicates a higher-level norm for the review;
- 2) minutes from a sitting of an authority referred to in Article 191(1)(4) of the Constitution which allow the Tribunal to determine that the resolution mentioned in point 1 was adopted in compliance with provisions of law or provisions of rules and regulations;
- 3) in the context of an authority referred to in Article 191(1)(4) of the Constitution – an up-to-date certified copy of an entry in the National Court Register.

## **Article 49**

1. An application concerning the conformity to the Constitution of the purposes of a political party – which are specified in the rules and regulations as well as manifesto of the political party, apart from the elements indicated in Article 47 – shall also comprise the indication of the rules and regulations or manifesto, or parts thereof, of the political party which raise reservations as to conformity to the Constitution.

2. An application concerning the conformity to the Constitution of the activity of a political party – apart from the elements indicated in Article 47 – shall also comprise the indication of activity, carried out by the political party, which the applicant wishes to subject to a review.

## **Article 50**

An application to settle a dispute over powers shall comprise:

- 1) the provision of the Constitution or a statute which specifies a power that is the subject of the dispute;
- 2) actions, or lack thereof, challenged in the dispute;
- 3) justification.

## **Article 51**

In an application to determine the existence of an impediment to the exercise of the office by the President of the Republic of Poland and to assign the Marshal of the Sejm with the temporary performance of the duties of the President of the Republic of Poland, there shall be an indication of circumstances which temporarily make it impossible for the President of the Republic of Poland to exercise his/her office and to notify the Marshal of the Sejm thereof.

## **Article 52**

1. A question of law shall have the form of a decision.
2. A question of law shall comprise:
  - 1) the indication of a court before which proceedings are conducted in a given case as well as the reference number of the case;
  - 2) the indication of an authority that has issued a challenged normative act;
  - 3) the indication of the challenged normative act, or part thereof;
  - 4) an allegation about the non-conformity of the challenged normative act to the Constitution, a ratified international agreement or a statute, as well as justification for the allegation, including evidence in support of the allegation;
  - 5) an explanation as to what extent an answer to the question of law may have an impact on the determination of the case with relation to which the question of law has been referred to the Tribunal.
3. The question of law shall be supplemented with the files of the case with relation to which the question of law has been referred to the Tribunal.

## **Article 53**

1. A constitutional complaint shall:
  - 1) specify a challenged provision of a statute or another normative act upon which basis a court or a public administration authority has made a final decision on the complainant's freedoms, rights or obligations specified in the Constitution, and with regard to which the complainant requests the Tribunal to determine non-conformity to the Constitution;
  - 2) indicate which constitutional freedom or right of the complainant, and in what way, according to the complainant, has been infringed;
  - 3) provide justification for an allegation about the non-conformity of the challenged provision of a statute or another normative act to the indicated constitutional freedom or right, including arguments or evidence in support of the allegation;
  - 4) state relevant facts;
  - 5) substantiate the date of service of the judgment, the decision or another determination,

which are referred to in Article 77(1);

6) provide information whether an extraordinary means of appeal was filed against the judgment, the decision or the determination, which are referred to in Article 77(1).

2. The following shall be provided together with a constitutional complaint:

1) a judgment, a decision or another determination issued on the basis of the provision referred to in para 1(1);

2) judgments, decisions or other determinations which substantiate that all legal means referred to in Article 64 have been exhausted;

3) a special power of attorney.

## Chapter 6

### **Costs of proceedings**

#### **Article 54**

1. The costs of proceedings before the Tribunal shall be covered by the State Treasury.

2. The Tribunal shall issue, along with a judgment granting a constitutional complaint, a decision on the reimbursement of the costs of proceedings before the Tribunal to the complainant by a public authority that issued a normative act which is the subject of the constitutional complaint. Where justified, the Tribunal may decide that the costs of proceedings before the Tribunal are to be reimbursed also when a constitutional complaint is dismissed.

3. The Tribunal may determine the costs of legal representation incurred by a complainant lodging a constitutional complaint, payable to an advocate or a legal adviser, depending on the nature of a case and the extent to which the said attorney's involvement contributed to the examination and determination of the case.

#### **Article 55**

1. The right to request the reimbursement of the costs of proceedings shall expire if, no later than prior to the closing of a hearing that directly precedes the delivery of a ruling, the complainant fails to submit the request for the reimbursement of the costs in accordance with prescribed norms.

2. Where the Tribunal considers a constitutional complaint at a sitting in camera, the claim for the reimbursement of the costs shall expire if the complainant does not submit the request for the reimbursement of the said costs in accordance with prescribed norms, no later than within



7 days from the date of service of the notification that the case will be considered at a sitting in camera.

## Chapter 7

### **The course of proceedings before the Tribunal**

#### Section 1

### **The institution of proceedings**

#### **Article 56**

1. Proceedings before the Tribunal shall be instituted on the basis of an application, a question of law or a constitutional complaint, lodged, respectively, by a competent applicant, court or complainant.
2. Until the commencement of the hearing:
  - 1) an applicant may withdraw his/her application;
  - 2) a complainant may withdraw his/her constitutional complaint;
  - 3) a court that has presented the Tribunal with a question of law may withdraw that question.
3. Where a case is to be considered at a sitting in camera, the withdrawal of an application, a question of law or a constitutional complaint may take place no later than within 7 days from the date of service of the notification referred to in Article 92(3).

#### **Article 57**

1. If, due to the content or form of a document lodged with the Tribunal, it may not be deemed that it is a procedural document, the President of the Tribunal shall return the document to the author or shall request the author to conditionally supplement the document, otherwise the document shall be returned.
2. The corrected or supplemented document shall have legal effects as of the moment of its submission.

#### **Article 58**

1. Proceedings before the Tribunal shall be carried out in a written form, unless the Act provides otherwise.
2. Procedural documents and annexes thereto produced by participants in proceedings, shall be lodged with the Tribunal in a number of copies that makes it possible to serve the documents on the other participants as well as to leave two other copies in the case file.

## Section 2

### **The discontinuance of proceedings**

#### **Article 59**

1. At a sitting in camera, the Tribunal shall issue a decision on the discontinuance of the proceedings:

- 1) when an application, a question of law or a constitutional complaint has been withdrawn;
- 2) if the issuance of a ruling is inadmissible;
- 3) if the issuance of a ruling is useless;
- 4) if a normative act within the challenged scope has ceased to be binding before the issuance of a ruling by the Tribunal;
- 5) when the term of office of the Sejm and the Senate has ended, whereas cases commenced by applications submitted by a group of Sejm Deputies or a group of Senators, as set out in Article 191(1)(1) of the Constitution, are still pending before the Tribunal.

2. If the circumstances referred to in para 1, points 1 to 5, become apparent at a hearing, the Tribunal shall issue a decision on the discontinuance of the proceedings.

3. The Tribunal shall not discontinue proceedings for reasons mentioned in para 1(4), if the issuing of a ruling is necessary in proceedings commenced by a constitutional complaint for the protection of constitutional rights and freedoms.

## Section 3

### **The preliminary review of applications, questions of law and constitutional complaints**

#### **Article 60**

1. An application lodged by an authority mentioned in Article 191(1), points 1 and 2, of the Constitution as well as a question of law shall be referred for consideration by the President of the Tribunal, if they meet requirements provided for in the Act.

2. If the application referred to in para 1 or the question of law fails to meet the requirements provided for in the Act, and where the elimination of defects is possible, the President of the Tribunal shall issue an order in which s/he requests that the defects be eliminated within 7 days from the date of service of the order.

#### **Article 61**

1. An application lodged by an authority mentioned in Article 191(1), points 3 to 5,

of the Constitution as well as a constitutional complaint shall be referred by the President of the Tribunal to a judge of the Tribunal designated by the said President for the purpose of the preliminary consideration of the application or the complaint at a sitting in camera.

2. If the application referred to in para 1 or the constitutional complaint meets requirements provided for in the Act and there are no circumstances referred to in para 4(3), the Tribunal shall issue a decision to proceed with the application or the complaint.

3. If the application referred to in para 1 or the constitutional complaint fails to meet the requirements provided for in the Act, and where the elimination of defects is possible, the designated judge of the Tribunal shall issue an order in which s/he requests that the defects be eliminated within 7 days from the date of service of the order.

4. The Tribunal sitting as a single judge shall issue a decision on refusal to proceed with the application referred to in para 1 or the constitutional complaint, if:

1) the application referred to in para 1 or the constitutional complaint fails to meet the requirements provided for in the Act, and where the elimination of defects is impossible;

2) defects referred to in para 3 have not been eliminated within the prescribed time-limit;

3) the application referred to in para 1 or the constitutional complaint are manifestly unfounded.

5. The applicant or the complainant shall have the right to lodge an appeal in the Tribunal against the decision referred to in para 4, within 7 days from the date of service of the decision.

6. Where the time-limit specified in para 5 is not met, the Tribunal shall, at a sitting in camera, issue a decision on the dismissal of the appeal.

7. After determining that the appeal referred to in para 5 has been filed within the set time-limit, the President of the Tribunal shall refer the appeal for consideration by the Tribunal at a sitting in camera and shall determine a date for the said consideration.

8. Having granted the appeal, the Tribunal shall issue a decision to proceed with the application referred to in para 1 or the constitutional complaint. A decision not to grant the appeal may not be appealed.

#### Section 4

### **The consideration of cases by the Constitutional Tribunal**

#### **Article 62**

The President of the Tribunal shall refer applications, questions of law and constitutional complaints, with regard to which there are no formal reservations, for consideration by

a competent adjudicating bench.

### **Article 63**

1. The President of the Tribunal shall notify participants in proceedings about the referral of an application, a question of law or a constitutional complaint for consideration by an adjudicating bench, provide them with certified copies of the application, the question of law or the complaint, as well as instruct them about their right to submit written statements. The President of the Tribunal may set a time-limit for a participant in proceedings within which the participant is to submit his/her written statement.
2. The provision of para 1 shall apply to the Ombudsman, with the exception of applications filed in cases specified in Article 37(1)(1)(d). Within 30 days from the date of receiving the notification, the Ombudsman may inform the Tribunal about his/her participation in proceedings and may submit his/her written statement about a case.
3. In proceedings instituted upon application by the Ombudsman as well as in proceedings concerning a constitutional complaint where the rights of the child are discussed, provisions of paras 1 and 2 shall be applied accordingly.
4. The Tribunal may request other authorities or parties to take a stance on a case within the set time-limit.

### **Article 64**

1. If, in at least two applications, questions of law or constitutional complaints, the subject of a review has been specified in the same way, the President of the Tribunal may order that those applications, questions of law or constitutional complaints be considered jointly.
2. The decision to jointly consider applications, questions of law or constitutional complaints shall be made by the President of the Tribunal, who determines the composition of an adjudicating bench. The President of the Tribunal may order the joint consideration of cases also upon motion by the adjudicating bench.
3. The Tribunal may not consider cases jointly if they have been initiated within the scope of different modes of review.

### **Article 65**

1. Where a ruling of the Tribunal may require incurring expenses which have not been provided for in the State Budget Act or the Interim State Budget Act, the President of the Tribunal shall request the Council of Ministers to present an opinion on the matter within the time-limit of 2 months.
2. Where justified, the President of the Tribunal may indicate a different time-limit for presenting the opinion.

3. Failure to present the opinion by the Council of Ministers within the set time-limit shall not prevent the consideration of the case.

#### **Article 66**

1. The conformity to the Constitution of the State Budget Bill or the Interim State Budget Bill, before they are signed, shall be determined by the Tribunal within 2 months from the date of the submission of the application.

2. Participants in those proceedings shall submit their statements within the time-limit set by the President of the Tribunal.

#### **Article 67**

1. When adjudicating, the Tribunal shall be bound by the scope of an application, a question of law or a constitutional complaint.

2. The scope referred to in para 1 shall comprise the indication of a challenged normative act, or part thereof, (the indication of the subject of a review) as well as the formulation of an allegation about non-conformity to the Constitution, a ratified international agreement or a statute (the indication of a higher-level norm for the review).

#### **Article 68**

When adjudicating on the conformity of a normative act or a ratified international agreement to the Constitution, the Tribunal shall examine not only the content of the said act or agreement, but also the competence for issuing the act or for entering into and ratifying the agreement, as well as the observance of a relevant procedure for doing so, required by the provisions of law.

#### **Article 69**

1. In the course of its proceedings, the Tribunal shall examine all significant circumstances in order to thoroughly examine a case.

2. Participants in proceedings shall be obliged to provide the Tribunal with any clarifications and information concerning a case and to present any evidentiary submissions that may be needed for the determination of the case.

3. The Tribunal shall not be bound by the evidentiary submissions of participants in proceedings, and may *ex officio* admit certain evidence which it finds useful for the determination of a case under consideration.

#### **Article 70**

1. The Tribunal may request the Supreme Court and the Supreme Administrative Court to provide information on the application or interpretation of a provision of law in the jurisprudence of the courts.

2. The presiding judge of an adjudicating bench shall provide the information referred to in para 1 to participants in relevant proceedings.

### **Article 71**

1. Courts and other public authorities shall be obliged to provide assistance to the Tribunal and, upon its request, present files of proceedings that are related to proceedings before the Tribunal, as well as provide information that is necessary for the thorough examination of a case.
2. After using the files of proceedings referred to in para 1, the Tribunal shall forthwith return the files to a competent authority.

### **Article 72**

The presiding judge of an adjudicating bench shall issue orders for the proper preparation of a hearing. The said presiding judge may, in particular:

- 1) order the service of relevant documents to participants in proceedings, which have been filed in the course of the proceedings;
- 2) request the participants to provide their statements about the case in writing and within a set time-limit;
- 3) request the participants in the proceedings to submit documents and additional material, which are crucial for the examination of the case;
- 4) request other authorities or organisations to participate in proceedings if s/he deems that their participation would be conducive to a thorough examination of the case.

### **Article 73**

1. The file of a case pending before the Tribunal shall not be confidential. This shall not apply to any confidential documents included in the case file as well as to any case files that are considered in camera.
2. The Tribunal shall not transfer the case file to other parties. In a particularly justified instance, the President of the Tribunal may, upon consultation with a competent adjudicating bench, permit that the case file is transferred to courts or other public authorities, stressing their obligation to return the file forthwith after the use thereof. The President of the Tribunal may set a time-limit for which the case file is transferred.

### **Article 74**

1. Participants in proceedings may access a relevant case file as well as prepare and receive certified copies, other copies, or excerpts related thereto, with the exception of documents containing confidential information.
2. The restriction mentioned in para 1 shall not concern persons authorised on the basis of separate provisions to access confidential information included in the case file.
3. It shall be admissible to access the case file as well as prepare and receive certified copies, other copies, or excerpts related thereto, by parties that are not participants in proceedings, after the file has been anonymised within the scope comprising personal data and also other data that

are vital for the identification of persons.

4. Access to documents included in a case file of the Tribunal shall be provided by:

1) publishing documents on the Internet website of the Tribunal, which constitutes part of the Public Information Bulletin;

2) granting access to the case file in the building of the Tribunal, subject to para 5;

3) granting access, upon application, to copies, certified copies or excerpts from the case file – unless those documents have been published pursuant to point 1 – after a fee has been paid in accordance with the provisions of the Act of 28 July 2005 on Court Fees in Civil Cases (Journal of Laws – Dz. U. of 2016 item 623).

5. Access to court files concerning constitutional complaints or questions of law shall be granted by providing copies of documents included in those files, after the files have been anonymised within the scope indicated in para 3.

6. The exercise of the rights set out in paras 1, 3 and 5 may not disrupt the work of the Tribunal.

### **Article 75**

An internal procedure for processing applications, questions of law and constitutional complaints shall be specified in the rules of procedure of the Tribunal.

## **Chapter 8**

### **Special provisions on proceedings before the Tribunal**

#### **Section 1**

### **Proceedings concerning constitutional complaints**

### **Article 76**

Proceedings concerning constitutional complaints shall be governed by the provisions of the Act with the differences provided for in this section.

### **Article 77**

1. A constitutional complaint may be lodged after a complainant has exhausted all legal means, if such means are provided for, and within 3 months of the date when the complainant was served with a legally effective judgment, a final decision or another final determination.

2. A constitutional complaint shall be considered by the Tribunal in accordance with the rules and procedure for the consideration of applications concerning the conformity of normative acts to the Constitution, ratified international agreements, or statutes.

### **Article 78**

If a complainant has lodged an extraordinary means of appeal, the Tribunal may stay proceedings until the consideration of that means.

### **Article 79**

1. The Tribunal may issue a provisional decision about the suspension of the execution of a determination in the case with regard to which a constitutional complaint has been lodged with the Tribunal, if the execution of a judgment, a decision or another determination could cause irrevocable consequences resulting in serious damage for the complainant, or when the said suspension is justified by an important public interest or a different important interest of the complainant.
2. The provisional decision shall be served forthwith on the complainant and a competent court or enforcement authority.
3. The Tribunal shall revoke its provisional decision when reasons for the issuance of the decision have ceased to exist, however no later than on the date of the Tribunal's issuance of a final ruling on a constitutional complaint.
4. Where the Tribunal rules that a normative act in question, or part thereof, is inconsistent with the Constitution, the provisional decision shall cease to have effect after 3 months from the date when the said ruling became effective.

### **Article 80**

A complainant may request that his/her personal data should not be disclosed in a published decision referred to in Article 61(4).

### **Section 2**

### **Proceedings to determine the conformity to the Constitution of the purposes or activities of political parties**

### **Article 81**

An application concerning the conformity to the Constitution of the purposes of a political party, which are specified in the party's rules and regulations or its manifesto, or the conformity to the Constitution of the activities of the political party, shall be considered by the Tribunal in accordance with the rules and procedure for the consideration of applications concerning the conformity of normative acts to the Constitution, ratified international agreements or statutes.

### **Article 82**

1. The burden of proving the non-conformity to the Constitution of the activities of a political party shall lie with the applicant.
2. Doubts that cannot be dispelled shall be resolved in favour of the political party concerned.



3. With regard to the hearing of witnesses and experts or the disclosure of documents that are essential for a determination by the Tribunal, the provisions of the Act of 6 June 1997 – the Code of Criminal Procedure (Journal of Laws – Dz. U. No. 89, item 555, as amended) shall be applied accordingly.

4. In order to gather and document evidence on the conformity to the Constitution of the activities of a political party, the Tribunal may, by issuing a decision, commission the Public Prosecutor-General to conduct an investigation. The scope of the investigation specified in the decision shall be binding. With regard to the investigation, the provisions of the Act of 6 June 1997 – the Code of Criminal Procedure shall be applied accordingly.

### **Article 83**

A question referred to the Tribunal by a court registering political parties – to determine the conformity to the Constitution of the rules and regulations of a political party, within the scope of the party’s purposes and activities, specified in the said rules and regulations – shall be considered by the Tribunal in accordance with the rules and procedure provided for questions of law.

### **Article 84**

1. The Tribunal shall determine persons who are authorised to represent a political party on the basis of the rules and regulations of the party or the Act of 27 June 1997 on Political Parties (Journal of Laws – Dz. U. of 2011 item 924, of 2015 items 1064 and 1485 as well as of 2016 item 1157).

2. Where it may not be determined who is authorised to represent a political party or if it is impossible to contact that person, the Tribunal shall deem that a person who is the actual leader of the party is the authorised person.

### **Section 3**

### **Proceedings to settle disputes over powers**

### **Article 85**

The Tribunal shall settle disputes over powers where:

- 1) at least two central constitutional state authorities consider themselves competent to determine the same matter or have delivered a determination with regard to that matter;
- 2) at least two central constitutional state authorities consider themselves to lack competence to determine a particular matter.

### **Article 86**

1. The institution of proceedings before the Tribunal shall result in a stay of proceedings before

the authorities that are involved in the dispute over powers.

2. After hearing the arguments of the participants in proceedings, the Tribunal may issue a decision to temporarily resolve disputable matters, and in particular to suspend any enforcement actions, if this is necessary to prevent serious damage or to protect a particularly important public interest.

#### Section 4

### **Proceedings to determine the existence of an impediment to the exercise of the office by the President of the Republic of Poland and to assign the Marshal of the Sejm with the temporary performance of the duties of the President of the Republic of Poland**

#### **Article 87**

1. The Tribunal shall forthwith consider an application submitted by the Marshal of the Sejm to determine the existence of an impediment to the exercise of the office by the President of the Republic of Poland and to assign the Marshal of the Sejm with the temporary performance of the duties of the President of the Republic of Poland, but no later than within 24 hours from the submission of the application.

2. The Tribunal shall consider the application referred to in para 1 at a hearing in camera.

#### **Article 88**

1. If any doubts arise at the hearing with regard to the circumstances mentioned in Article 51, the Tribunal may, by issuing a decision, commission the Public Prosecutor-General to take certain measures within a specified time-limit as well as adjourn the hearing.

2. The hearing may not be adjourned for longer than 24 hours.

3. The Public Prosecutor-General shall forthwith notify the Tribunal about the effects of the measures taken to execute the decision referred to in para 1.

#### **Article 89**

1. The Tribunal shall issue a decision in which it determines the existence of an impediment to the exercise of the office by the President of the Republic and assigns the Marshal of the Sejm with the temporary performance of the duties of the President of the Republic for a period no longer than three months.

2. The decision shall cease to have effect:

1) if, before the lapse of the time-limit specified therein, the President of the Republic of Poland shall notify the Marshal of the Sejm and the Tribunal about his/her capacity to exercise the office;

2) if there occurs a circumstance specified in Article 131(2), points 1, 2, 4 or 5, of the Constitution.

### **Article 90**

1. Where – after the lapse of the time-limit for which the Tribunal assigned the Marshal of the Sejm with the temporary performance of presidential duties – the circumstances which temporarily make it impossible for the President of the Republic of Poland to exercise the office have not ceased to exist, the Marshal of the Sejm may again, for the last time, refer to the Tribunal with an application to determine whether or not there exists an impediment to the exercise of the office by the said President and to assign the Marshal of the Sejm with the temporary performance of the duties of the President of the Republic of Poland.

2. The application referred to in para 1, submitted again by the Marshal of the Sejm, shall be considered on the basis of the provisions of Articles 87-89.

## **Chapter 9**

### **Hearings and sittings**

#### **Article 91**

The Tribunal shall consider an application, a question of law or a constitutional complaint at a hearing or at a sitting in camera.

#### **Article 92**

1. The Tribunal may consider an application, a question of law or a constitutional complaint at a sitting in camera, if:

1) written statements of all participants in proceedings as well as the other evidence gathered with regard to a case constitute a sufficient basis for issuing a ruling; or

2) a case concerns a legal matter that has been sufficiently examined in previous rulings of the Tribunal; or

3) it is indisputable – after analysing written statements submitted by the participants in proceedings – that a normative act upon which basis a court or a public administration authority has made a final decision on the complainant's constitutional freedoms, rights or obligations is inconsistent with the Constitution.

2. A decision to consider an application, a question of law or a constitutional complaint at a sitting

in camera shall be taken by a competent adjudicating bench. For the consideration of an application, a question of law or a constitutional complaint at a sitting in camera, it shall be necessary to receive statements from all participants in proceedings.

3. The presiding judge of an adjudicating bench shall notify participants in proceedings that the consideration of a given case shall take place at a sitting in camera.

4. The consideration of an application, a question of law or a constitutional complaint at a sitting in camera by a full bench of the Tribunal shall be inadmissible.

5. The Tribunal shall determine a case at a sitting in camera in other instances where the Act does not provide for the consideration of a case at a hearing.

### **Article 93**

1. The presiding judge of an adjudicating bench shall set the date of a hearing and shall notify the participants about the date.

2. The hearing may not be held earlier than after 30 days following the service of the notification of the said date.

3. The time-limit referred to in para 2 shall not apply to the review of a State Budget Bill or an Interim State Budget Bill, before they are signed, as well as to the consideration of an application to determine the existence of an impediment to the exercise of the office by the President of the Republic of Poland and to assign the Marshal of the Sejm with the temporary performance of presidential duties; in both contexts, the Tribunal shall commence its examination forthwith.

4. The President of the Tribunal may order that the time-limit set in para 2 be shortened by half, unless a court referring a question of law, a complainant or an applicant, respectively, objects to this within 7 days from the date of service of the order issued by the President of the Tribunal.

5. The Tribunal shall adjourn a hearing where there is no evidence that the notification about the date of the hearing has been served on the participants in proceedings, or where it has been deemed that the notification was not properly served; the Tribunal may also adjourn a hearing for other serious reasons.

6. When adjourning a hearing, the Tribunal may set a new date about which it shall notify participants in proceedings. The provision of para 2 shall not be applied.

### **Article 94**

1. Hearings before the Tribunal shall be held in public, unless the Act states otherwise. The presiding judge of an adjudicating bench may hold a hearing in camera to safeguard national security or to protect classified information labelled as 'secret' or 'top secret'.

2. A witness or an expert may be questioned about circumstances related to classified information labelled as 'secret' or 'top secret', after the said person is relieved from

the obligation of confidentiality by a competent authority. Refusal to grant consent may only be justified by an important state interest.

3. A witness or an expert shall not exercise the right to refuse to testify if the Tribunal deems that the authority's refusal to grant consent, as referred to in para 2, is unjustified.

#### **Article 95**

1. At a hearing, the attendance of an applicant or a complainant, or his/her representative or attorney, shall be mandatory. In the event of the absence of the applicant or the complainant, or his/her representative or attorney, where the said persons have been properly notified, the Tribunal shall discontinue the proceedings or adjourn the hearing.

2. In the event of the absence of participants in proceedings whose attendance at a hearing is mandatory, or their representatives or attorneys, the Tribunal may adjourn the hearing and set a new date for the hearing. The provision of Article 93(2) shall not apply.

3. In the event of the absence of other participants at a hearing, where the said persons have been properly notified, the consideration of the case shall not be suspended; in such a situation, at the hearing, the judge rapporteur shall present the stance of the absent participant.

#### **Article 96**

1. On the day of a hearing, a docket shall be placed in front of a relevant courtroom in the building of the Tribunal; the docket shall include information about an adjudicating bench, the reference number of a case, the time when the hearing is to begin, the list of participants in proceedings as well as the scope of allegation.

2. When an adjudicating bench enters or leaves the courtroom, everyone present in the courtroom shall stand up. During a hearing, every person addressed by, or addressing, a judge from the adjudicating bench of the Tribunal, shall stand up, unless the presiding judge of the adjudicating bench exempts the person from that obligation.

#### **Article 97**

1. A hearing shall commence with the indication of a relevant case; then, an applicant, a court referring a question of law to the Tribunal or a complainant, and subsequently the other participants in proceedings, shall present their statements and evidence in support thereof, as well as they shall answer questions posed by the judges of the adjudicating bench of the Tribunal.

2. The presiding judge shall allow each participant to have the floor; where necessary, the judge shall grant the floor also to authorities or parties requested to participate in the proceedings.

#### **Article 98**

The presiding judge of an adjudicating bench shall preside over a hearing and shall issue orders

that are necessary to maintain the dignity of the court and to keep order at the hearing, and – where necessary – s/he shall take measures provided for in the Act of 27 July 2001 on the Organisational Structure of Common Courts.

#### **Article 99**

1. When granting a recess during a hearing, the presiding judge of an adjudicating bench shall announce the time when the hearing is to be reconvened.
2. In the event that a hearing is adjourned by a decision of an adjudicating bench, the presiding judge of the adjudicating bench may set another date for the hearing. The provision of Article 93(2) shall not apply.
3. Where it is not possible to set another date for a hearing forthwith, the provision of Article 93(2) shall apply accordingly.

#### **Article 100**

When the Tribunal deems that a case has been sufficiently examined, the presiding judge of the adjudicating bench shall close the hearing.

#### **Article 101**

1. A recording clerk shall prepare the minutes of a hearing, under the direction of the presiding judge.
2. The minutes shall indicate:
  - 1) the date and place of the hearing;
  - 2) the first and last names of the following: the judges from the adjudicating bench, the recording clerk, the participants in proceedings, as well as their representatives and attorneys;
  - 3) the reference number of the case with information whether the case was considered in public or in camera;
  - 4) the course of the hearing, and in particular: the motions and statements of the participants in proceedings; the outcome of evidentiary proceedings; the indication of orders and rulings issued at the hearing, as well as information about the delivery thereof.
3. The participants in proceedings may request that the minutes be corrected or supplemented until the date of the delivery of a ruling; and in the case of the minutes from the hearing where the ruling was delivered – within 14 days from the date of the hearing.
4. The motions referred to in para 3 shall be determined by the presiding judge by issuing an order, after hearing the recording clerk. The order may not be appealed.
5. The minutes shall be signed by the presiding judge of the adjudicating bench and the recording clerk. A note about any corrections made in the minutes shall be signed by

the presiding judge.

6. Apart from drawing up the minutes, the course of a hearing may be documented by means of shorthand notes or a sound recording, or a sound and video recording. A transcript of the shorthand notes or of the recording referred to in the first sentence shall be enclosed with the minutes.

## Chapter 10 **Rulings of the Tribunal**

### **Article 102**

The Tribunal shall determine a case, by issuing a ruling in the form of a judgment or a decision.

### **Article 103**

1. The Tribunal shall issue judgments in cases concerning:

- 1) the conformity of statutes and international agreements to the Constitution;
- 2) the conformity of statutes to international agreements whose ratification required prior consent granted by statute;
- 3) the conformity of legal provisions issued by central state authorities to the Constitution, ratified international agreements, and statutes;
- 4) constitutional complaints;
- 5) the conformity to the Constitution of the purposes or activities of political parties.

2. The Tribunal shall issue decisions:

- 1) in cases to settle disputes over powers between central constitutional state authorities;
- 2) in cases to determine whether or not there exists an impediment to the exercise of the office by the President of the Republic of Poland and to assign the Marshal of the Sejm with the temporary performance of presidential duties;
- 3) in other cases in the context of which the Act states so or which do not require the issuing of a judgment.

### **Article 104**

1. The Tribunal's decisions that conclude proceedings shall be issued after the close of a hearing or at a sitting in camera. They shall require a statement of reasons.

2. The Tribunal's decisions that do not conclude proceedings in a given case may be revoked or modified due to a change in circumstances.

#### **Article 105**

1. The Tribunal shall issue a ruling after deliberation in camera, held by the judges of an adjudicating bench.
2. Deliberation shall comprise a discussion and vote on a ruling and main reasons for the ruling, as well as the drawing up of the ruling.
3. Deliberation shall be presided over by the presiding judge of an adjudicating bench.
4. In a particularly complex case, or for other serious reasons, the issuing of a ruling may be deferred for a period not exceeding 14 days.

#### **Article 106**

1. A ruling of the Tribunal shall be determined by a majority vote.
2. The presiding judge of an adjudicating bench shall request the judges to cast their votes in the order based on their age, beginning with the youngest judge; the presiding judge shall cast the last vote.
3. A judge of the adjudicating bench who disagrees with the majority of the bench voting in favour of a ruling may, before the delivery of the ruling, submit a dissenting opinion, providing a written statement of grounds for his/her dissent; the dissenting opinion shall be mentioned in the ruling. The dissenting opinion may also refer only to the statement of reasons for the ruling.
4. The ruling shall be signed by all the judges of the adjudicating bench, including the outvoted judge.

#### **Article 107**

A ruling of the Tribunal may refer to an entire normative act or to particular provisions thereof.

#### **Article 108**

1. A ruling of the Tribunal shall indicate:
  - 1) the composition of an adjudicating bench, and a recording clerk;
  - 2) the reference number of a case;
  - 3) the date and place of the issuance of a ruling as well as the mode of proceedings in which the ruling is issued;
  - 4) the initiator of proceedings, and the other participants in the proceedings;



- 5) a normative act, or part thereof, that is the subject of the ruling;
- 6) allegations raised by the initiator of the proceedings before the Tribunal;
- 7) a determination adopted by the Tribunal, including the outcome of a vote carried out by the judges of the adjudicating bench;
- 8) the signatures of the judges of the adjudicating bench;
- 9) the submission of any dissenting opinions.

2. Where the Tribunal decides that a normative act will cease to have effect after the date of the delivery of its ruling in which the Tribunal determines the non-conformity of the act to the Constitution, a ratified international agreement or a statute, the ruling shall specify a date when the act ceases to have effect.

3. The Tribunal shall, no later than within one month from the date of the delivery of its ruling, prepare a written statement of reasons for the ruling. The statement of reasons shall be signed by the judges of the Tribunal who have voted on the ruling.

4. If any of the judges referred to in para 3 cannot sign the aforementioned statement of reasons, the presiding judge of the adjudicating bench shall note down, on the ruling, the reason for the lack of the signature. If the statement of reasons cannot be signed by the presiding judge, the reason for the lack of the signature shall be noted down on the ruling by the most senior judge of the Tribunal among the judges of the Tribunal who have voted on the ruling.

5. The provisions of paras 1, 3 and 4 shall be applied to rulings issued in cases other than those concerning the examination of the conformity of normative acts, or parts thereof, to the Constitution, ratified international agreements or statutes.

#### **Article 109**

1. An adjudicating bench of the Tribunal that has issued a ruling may at any point, by issuing a decision at a sitting in camera, correct any inaccuracies, linguistic or calculation mistakes, or any other obvious errors in a ruling or the statement of reasons for the ruling.

2. The original ruling – and where requested by the participants in the proceedings, also certified copies of the ruling served on them – shall include a note about corrections, signed by the presiding judge of the adjudicating bench.

3. If the said corrections may not be made by the adjudicating bench indicated in para 1, the request shall be considered by an adjudicating bench composed of the same number of judges as the bench indicated in para 1.

#### **Article 110**

1. Where requested by a participant in proceedings, the adjudicating bench that has issued

a ruling at a sitting in camera shall address any doubts concerning the content of the ruling, by issuing a decision in this respect.

2. If a request for dispelling doubts concerning the content of the ruling may not be considered by the adjudicating bench indicated in para 1, the request shall be considered by an adjudicating bench composed of the same number of judges as the bench indicated in para 1.

#### **Article 111**

With regard to matters concerning the preparation of a hearing or a sitting as well as procedural matters, orders shall be issued.

#### **Article 112**

1. A ruling shall be written down and then it shall be delivered in the presence of participants in proceedings. During the public delivery of the ruling, everyone present in the courtroom, except for the judges of the adjudicating bench, shall remain standing.

2. When justifying the ruling, the presiding judge or the judge rapporteur shall speak of main reasons for the ruling and shall inform about the submission of any dissenting opinions. A judge of the Tribunal who has submitted a dissenting opinion shall present main reasons for his/her stance.

#### **Article 113**

The Tribunal's rulings delivered in accordance with the procedure set out in Article 112 shall be served forthwith on the participants in proceedings, after the statements of reasons have been drawn up.

#### **Article 114**

1. The rulings of the Tribunal shall be published in an appropriate official journal in accordance with the rules and procedure laid down in the Constitution and in the Act of 20 July 2000 on the Promulgation of Normative Acts and Certain Other Legal Acts (Journal of Laws – Dz. U. of 2016, items 296 and 1579).

2. The publication of the Tribunal's rulings shall be ordered by the President of the Tribunal.

#### **Article 115**

1. The Tribunal shall publish a collection of its rulings in an electronic form.

2. The collection referred to in para 1 shall comprise the Tribunal's rulings together with the statements of reasons and dissenting opinions.

3. The title '*Orzecznictwo Trybunału Konstytucyjnego*' (Eng. The Jurisprudence of the Constitutional Tribunal) shall be subject to copyright.

### PART III

#### **The final provision**

#### **Article 116**

The Act shall enter into force on the day specified in the Act of 13 December 2016 – the Introductory Provisions to the Act on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal and to the Act on the Status of the Judges of the Constitutional Tribunal.

The President of the Republic of Poland: *A. Duda*

[translated from Polish into English by Magda Wojnowska]