

[Published in the Journal of Laws of the Republic of Poland on 19 December 2016,
item 2074]

**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 Tribunal¹**

Article 1

The Act of 30 November 2016 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 Tribunal:

- 1) Articles 1-6, which shall enter into force on the day following the date of the publication of this Act;
- 2) Articles 16-32, which shall enter into force on 1 January 2018.

Article 2

The Act of 30 November 2016 on the Status of the Judges of the Constitutional Tribunal (Journal of Laws – Dz. U. item 2073) shall enter into force after 14 days from the date of the publication of this Act, except for Articles 1-6, Article 16, Article 17, Article 19, Article 31 and Article 35, which shall enter into force on the day following the date of the publication of this Act.

Article 3

The Constitutional Tribunal Act of 22 July 2016 shall cease to have effect (Journal of Laws – Dz. U. item 1157), except for Article 18(1), (4) and (5), which shall cease to have effect as of 1 January 2018.

Article 4

In the Act of 16 September 1982 on the Employees of State Institutions (Journal of Laws – Dz. U. of 2016, item 1511), the following changes shall be introduced:

- 1) Article 1(1)(6) shall read as follows:

¹This Act amends the following statutes: the Act of 16 September 1982 on the Employees of State Offices; the Act of 9 May 1996 on the Exercise of the Mandates of Sejm Deputies and Senators; the Act of 27 June 1997 on Political Parties; the Act of 21 August 1997 on restrictions on economic activity carried out by public officials; the Act of 18 December 1998 on the employees of courts and public prosecution offices; also, this Act repeals the Constitutional Tribunal Act of 22 July 2016.

“6) the Chancellery of the Constitutional Tribunal;”;

2) Article 36(5)(8) shall read as follows:

“8) the President of the Constitutional Tribunal – with regard to the public servants of the Chancellery of the Constitutional Tribunal, subject to para 5a;”.

Article 5

In the Act of 9 May 1996 on the Exercise of the Mandates of Sejm Deputies and Senators (Journal of Laws – Dz. U. of 2016 item 1510), Article 30(1) shall read as follows:

“1. During the period of exercising their mandates, Sejm Deputies and Senators may not perform work on the basis of an employment relationship in the following: the Chancellery of the Sejm, the Chancellery of the Senate, the Chancellery of the President of the Republic of Poland, the Chancellery of the Constitutional Tribunal, the Office of the Legal Service of the Constitutional Tribunal, the Supreme Audit Office, the Office of the Ombudsman, the Office of the Ombudsman for Children, the Office of the National Council of Radio and Television Broadcasting, the National Electoral Office, the National Labour Inspectorate, the government administration and the local self-government administration (with the exception of an employment relationship arising from election), as well as they may not perform the duties of a judge, an assistant judge and a public prosecutor, an employee of the administrative department of a court or a public prosecution office, as well as they may not be soldiers in service.”.

Article 6

In 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), Article 43 shall read as follows:

“Article 43. The mode of proceedings in cases referred to in Article 42 shall be specified by the Act of 30 November 2016 on the Organisation of the Constitutional Tribunal and the Mode of Proceedings Before the Constitutional Tribunal (Journal of Laws – Dz. U. item 2072).”.

Article 7

In the Act of 21 August 1997 on restrictions on economic activity carried out by public officials (Journal of Laws – Dz. U. of 2006 item 1584, of 2008 item 1458, of 2009 item 1375, of 2010 item 1228, of 2015 item 1635, as well as of 2016 item 1202), the following changes shall be introduced:

1) Article 1 shall read as follows:

“Article 1. The Act shall determine restrictions on economic activity carried out by public officials managerial positions in state institutions within the meaning of provisions on the remuneration of persons holding managerial positions in state institutions.”;

2) Article 8(3) and (4) shall read as follows:

“3. The President of the Republic of Poland, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, the Head of the Chancellery of the President of the Republic

of Poland, the Head of the Chancellery of the Sejm, the Head of the Chancellery of the Senate, the President of the Supreme Audit Office, the Public Prosecutor-General, the Ombudsman, the President of the Supreme Administrative Court, the President of the National Bank of Poland, the President of the National Council of Radio and Television Broadcasting, the Chief Labour Inspector, the President of the Polish Academy of Sciences, the Head of the National Electoral Office, as well as the Insurance Ombudsman shall lodge the statement referred to in para 1 with the First President of the Supreme Court. The First President of the Supreme Court shall lodge the statement with the President of the Republic of Poland.

4. Para 2 shall not apply to the following authorities: the President of the Republic of Poland, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, the Vice-Marshall of the Sejm, the Vice-Marshall of the Senate, the Vice-Prime Minister, the President of the Supreme Audit Office, the Vice-President of the Supreme Audit Office, the Public Prosecutor-General, the Ombudsman, the President of the Supreme Administrative Court, the Vice-President of the Supreme Administrative Court, the First President of the Supreme Court, the President of the Supreme Court, the President of the National Bank of Poland, the first deputy of the President of the National Bank of Poland as well as the Vice-President of the National Bank of Poland.”;

3) Article 10(5) shall read as follows:

“5. The President of the Republic of Poland, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, the Head of the Chancellery of the President of the Republic of Poland, the Head of the Chancellery of the Sejm, the Head of the Chancellery of the Senate, the President of the Supreme Audit Office, the Ombudsman, the President of the Supreme Administrative Court, the President of the National Bank of Poland, the President of the National Council of Radio and Television Broadcasting, the Chief Labour Inspector, the President of the Polish Academy of Sciences, the Head of the National Electoral Office, as well as the Insurance Ombudsman shall lodge the statement referred to in para 1 with the First President of the Supreme Court, who shall then analyse data included therein. The First President of the Supreme Court shall lodge the statement referred to in para 1 with the President of the Republic of Poland, who shall then analyse data included therein.”.

Article 8

In the Act of 18 December 1998 on the Employees of Courts and Public Prosecution Offices (Journal of Laws – Dz. U. of 2015 item 1241 as well as of 2016 items 178 and 394), the following changes shall be introduced:

1) in Article 1, in point 2 the full stop shall be replaced with a semi-colon, and the following point 3 shall be added:

“3) the Office of the Legal Service of the Constitutional Tribunal.”;

2) Articles 14a-18 shall read as follows:

“Article 14a. The remuneration of the public servants and other employees of courts and public prosecution offices or the remuneration of the employees of the Office of the Legal Service of the Constitutional Tribunal shall be increased within time-limits and in accordance

with rules laid down for the employees of the public sector who are not covered by the multiplier-based remuneration systems.

Article 15. After 5 years of employment, a public servant or another employee of a court or a public prosecution office or an employee of the Office of the Legal Service of the Constitutional Tribunal shall be eligible for a seniority increment of 5% of the monthly basic remuneration. The said seniority increment shall increase by 1% for every subsequent year of employment until reaching the level of 20% of the monthly basic remuneration.

Article 16. After many years of employment, a public servant or another employee of a court or a public prosecution office or an employee of the Office of the Legal Service of the Constitutional Tribunal shall be eligible for a seniority bonus:

- 1) after 20 years of employment – 75% of the monthly remuneration;
- 2) after 25 years of employment – 100% of the monthly remuneration;
- 3) after 30 years of employment – 150% of the monthly remuneration;
- 4) after 35 years of employment – 200% of the monthly remuneration;
- 5) after 40 years of employment – 300% of the monthly remuneration;
- 6) after 45 years of service – 400% of the monthly remuneration.

Article 17. Where an employment relationship has expired due to the award of an incapacity-for-work pension or an old-age pension, a public servant or another employee of a court or a public prosecution office or an employee of the Office of the Legal Service of the Constitutional Tribunal shall be eligible for one-time severance pay in the amount of:

- 1) two months' remuneration – after 10 years of employment in a court or a public prosecution office or the Constitutional Tribunal;
- 2) three months' remuneration – after 15 years of employment in a court or a public prosecution office or the Constitutional Tribunal;
- 3) six months' remuneration – after 20 years of employment in a court or a public prosecution office or the Constitutional Tribunal.

Article 18. Within the scope not regulated in this Act, as regards public servants and other employees of courts and public prosecution offices or the employees of the Office of the Legal Service of the Constitutional Tribunal, the provisions of the Act of 16 September 1982 on the Employees of State Offices (Journal of Laws – Dz. U. of 2016 items 1511 and 2074) shall be applied accordingly; within the scope not regulated also in the latter Act, the provisions of the Act of 26 June 1974 – the Labour Code (Journal of Laws – Dz. U. of 2016 item 1666) shall be applicable.”

Article 9

1. Proceedings before the Constitutional Tribunal (hereinafter referred to as ‘the Tribunal’) which were pending before the entry into force of the Act referred to in Article 1 shall be governed by the provisions of this Act.

2. Procedural steps taken in the course of the proceedings referred to in para 1 shall remain valid.

Article 10

1. A judge of the Tribunal whose term of office began before the entry into force of the Act referred to in Article 2 may – within one month from the date of the entry into force of the said Act – present the President of the Tribunal with a statement that s/he intends to retire due to the introduction of new rules for the performance of judicial duties by the judges of the Tribunal, specified in Article 11(3), Article 13 as well as Article 14 of the said Act.

2. The judge of the Tribunal shall become a retired judge of the Tribunal, as mentioned in para 1, on the first day of the month following the month when the statement was filed. The fact that the judge has become a retired judge of the Tribunal shall be determined by the President of the Tribunal by issuing a decision.

Article 11

1. As of 1 January 2018, the Office of the Tribunal shall cease to exist, and shall be replaced by the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal.

2. Until 31 December 2017, the Office of the Tribunal shall operate in accordance with rules laid down in Article 18(1), (4), and (5) of the Act referred to in Article 3 as well as in acts issued on the basis of those provisions.

3. Until 31 December 2017, the General Assembly of the Judges of the Tribunal (hereinafter referred to as ‘the General Assembly’) may introduce changes into the binding rules and regulations of the Office of the Tribunal.

Article 12

1. The position of the Head of the Office of the Tribunal shall cease to exist.

2. The powers and duties of the Head of the Office of the Tribunal – which are set out in the Act referred to in Article 3 as well as in the rules and regulations of the Office of the Tribunal issued on the basis of Article 15(1)(3) in conjunction with Article 18(4) of the said Act – shall be exercised by the President of the Tribunal or a person authorised by the said President to do so.

Article 13

1. The employees of the Office of the Tribunal shall keep their rights and continue to perform their professional duties, within the scope provided for in the previous acts on the basis of which their employment relationship was established, until:

1) 31 December 2017, if they have accepted new terms of work and remuneration proposed to them for a further period of employment, with relation to the dissolution of the Office of the Tribunal; or

2) the date when the employment relationship referred to in para 2 expires; or

3) the date when the employment relationship referred to in para 4 is terminated.

2. The employment relationship with the employees referred to in para 1 shall expire on 31 December 2017:

1) if, until 30 September 2017, the new terms of work and remuneration for a further period of employment, are not proposed to them with relation to the dissolution of the Office of the Tribunal; or

2) if, before 15 December 2017, the employees refuse to accept the new terms of work and remuneration proposed to them with relation to the dissolution of the Office of the Tribunal.

3. No later than until 30 September 2017, the employer shall notify, in a written form, the employee referred to in para 1 about the date of the expiry of the employment relationship or the effects of refusal to accept the new terms of work and remuneration proposed to the employee with relation to the dissolution of the Office of the Tribunal.

4. An earlier termination of the employment relationship by the employer may occur with notice.

5. In the event of the expiry of the employment relationship specified in para 2 or the termination of the said relationship as mentioned in para 4, the employees referred to in para 1 shall have the right to receive a severance pay determined by rules laid down in Article 8 of the Act of 13 March 2003 on special terms of terminating employment relationships for reasons not related to employees (Journal of Laws – Dz. U. of 2016 item 1474).

Article 14

The President of the Tribunal shall appoint, by issuing an order, an administrator responsible for the dissolution of the Office of the Tribunal as well as for the organisation of the Chancellery of the Tribunal and the Office of the Legal Service of the Tribunal (hereinafter referred to as ‘the administrator’); the President of the Tribunal shall determine the administrator’s scope of duties and remuneration.

Article 15

1. Until 31 July 2017, the General Assembly shall adopt the following:

1) the rules of procedure of the Tribunal;

2) 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, which are referred to in Article 6(2)(8) of the Act indicated in Article 1;

3) the Code of Ethics for the Judges of the Constitutional Tribunal.

2. Until 31 August 2017, the President of the Tribunal shall issue orders to specify:

1) the number and list of positions to be held by the employees of the Chancellery of the Tribunal, qualifications required for those positions, the detailed scope of responsibilities assigned to those positions as well as the manner and terms of fulfilling those responsibilities;

2) the terms of remuneration for the employees of the Chancellery of the Tribunal;

3) the number and list of positions to be held by the employees of the Office of the Legal Service of the Tribunal, additional qualifications required for those positions, the detailed scope of responsibilities assigned to those positions as well as the manner and terms of fulfilling those responsibilities;

4) the terms of remuneration for the employees of the Office of the Legal Service of the Tribunal.

3. The legal acts referred to in paras 1(2) and 2 shall enter into force on 1 January 2018.

4. Until 25 September 2017, the General Assembly shall adopt a draft estimate of revenue and expenditure of the Tribunal, which is referred to in Article 6(2)(9) of the Act indicated in Article 1. The estimate shall take account of the organisational structure and organisational units of the Tribunal under the legal framework to enter into force on 1 January 2018, which is specified in the Act referred to in Article 1 as well as in the legal acts referred to in paras 1(2) and 2.

Article 16

1. If, until the date of the publication of this Act, the General Assembly:

1) has not been convened by the President of the Tribunal; or

2) has been convened by the President of the Tribunal in breach of the requirements set out in the Act referred to in Article 3; or

3) has not presented candidates for the position of the President of the Tribunal to the President of the Republic of Poland; or

4) has presented candidates for the position of the President of the Tribunal to the President of the Republic of Poland, and the head of state has not appointed the President of the Tribunal; or

5) has selected candidates for the position of the President of the Tribunal in breach of the provisions of the Act referred to in Article 3

-- the procedure for presenting candidates for the position of the President of the Tribunal shall be carried out as prescribed in Article 21 of this Act.

2. In situations specified in para 1, points 1-5, all procedural steps and acts adopted within the scope of the procedure for presenting candidates for the position of the President of the Tribunal to the President of the Republic of Poland shall cease to be valid.

Article 17

1. Should it prove necessary to carry out the procedure set out in Article 21 for presenting candidates for the position of the President of the Tribunal, from the day following the date of the publication of this Act until the date of the appointment of the President of the Tribunal,

the Tribunal shall be managed by a judge of the Tribunal who is assigned the duties of the President of the Tribunal in a decision issued by the President of the Republic of Poland.

2. A judge of the Tribunal assigned with the duties of the President of the Tribunal shall be selected by the President of the Republic of Poland from among the judges of the Tribunal with the longest period of work experience in common courts or in the central state administration, in positions related to the application of law.

3. In the situation specified in para 1, the provision of Article 11(2) of the Act referred to in Article 1 shall not be applied.

Article 18

A judge of the Tribunal who has been assigned the duties of the President of the Tribunal by the President of the Republic of Poland, hereinafter referred to as ‘the judge performing the duties of the President of the Tribunal’, shall:

- 1) coordinate the work of the Tribunal and represent the Tribunal in relations with other authorities or entities;
- 2) assign cases to the judges of the Tribunal who have taken the oath of office before the President of the Republic of Poland and create conditions that make it possible for the judges of the Tribunal to perform their judicial duties;
- 3) carry out activities from the scope of labour law with regard to the employees of the Office of the Tribunal;
- 4) exercise other powers and duties prescribed in this Act for the President of the Tribunal or for the judge performing the duties of the President of the Tribunal;
- 5) exercise powers and duties provided for the President of the Tribunal in the Acts referred to in Articles 1 and 2, the rules of procedure of the Tribunal, as well as the rules and regulations of the Office of the Tribunal.

Article 19

Those judgments and determinations of the Tribunal which were adopted in breach of the provisions of the Constitutional Tribunal Act of 25 June 2015 (Journal of Laws – Dz. U. of 2016, item 293) or the Constitutional Tribunal Act of 22 July 2016, and which were issued prior to the entry into force of the Act referred to in Article 1, shall be subject to publication in relevant official journals, after their publication is ordered by the judge performing the duties of the President of the Tribunal, unless they concern normative acts that have ceased to be binding.

Article 20

Within one month from the day following the date of the publication of this Act, the judge performing the duties of the President of the Tribunal shall carry out the procedure for presenting candidates for the position of the President of the Tribunal to the President of the Republic of Poland in accordance with rules set out in Article 21.

Article 21

1. The judge performing the duties of the President of the Tribunal shall forthwith convene a sitting of the General Assembly for the purpose of presenting the President of the Republic of Poland with candidates for the position of the President of the Tribunal, and shall notify the judges of the Tribunal about the date of that sitting.
2. The sitting referred to in para 1 shall be attended by the judges of the Tribunal who have taken the oath of office before the President of the Republic of Poland. The judge performing the duties of the President of the Tribunal shall determine the agenda of the sitting and shall preside over the sitting.
3. 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 4-9.
4. Every judge of the Tribunal referred to in para 2 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 performing the duties of the President of the Tribunal from the day of notification about the date of the sitting of the General Assembly, referred to in para 1, until the beginning of the sitting.
5. The first and last names of the judges of the Tribunal provided in accordance with para 4 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. The vote shall be by secret ballot.
6. A template of the ballot paper shall be specified in an order issued by the judge performing the duties of the President of the Tribunal.
7. All judges of the Tribunal who have received at least 5 votes each in the vote referred to in para 5 shall be presented as candidates for the position of the President of the Tribunal in a resolution adopted by the General Assembly.
8. Where only one judge of the Tribunal has received the requisite number of votes specified in para 7, the General Assembly shall, by resolution, present the following candidates for the position of the President of the Tribunal: the judge of the Tribunal who has received the requisite number of at least 5 votes; and 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.
9. Where, in the situation specified in para 8, 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 7, the General Assembly – including the judge of the Tribunal who has received at least 5 votes – shall, by resolution, 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.
10. A resolution presenting the judges of the Tribunal selected by the General Assembly as candidates for the position of the President of the Tribunal shall be signed by the judge of the Tribunal presiding over the deliberation, who shall forthwith provide the signed

resolution to the President of the Republic of Poland.

11. Where the application of the procedure laid down in paras 4-9 does not result in selecting at least two judges of the Tribunal as the candidates of the General Assembly for the position of the President of the Tribunal, the judge performing the duties of the President of the Tribunal shall close the meeting and shall convene another sitting of the General Assembly for the purpose of presenting candidates for the position of the President of the Tribunal.

12. The sitting of the General Assembly referred to in para 11 shall be governed by the provisions of paras 2-11.

Article 22

Where the procedure specified in Article 21 is applied, the provisions of Article 8 and Article 11(3)-(15) of the Act referred to in Article 1 shall not apply.

Article 23

This Act shall enter into force after 14 days from the date of its publication, except for:

- 1) Articles 1-3, Article 12, as well as Articles 16-22, which shall enter into force on the day following the date of the publication;
- 2) Articles 4, 5 and 8, which shall enter into force as of 1 January 2018.

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

[translated from Polish into English by Magda Wojnowska]