

[Published in the Journal of Laws of the Republic of Poland on 19 December 2016,
item 2073]

The Act of 30 November 2016
on the Status of the Judges of the Constitutional Tribunal

Chapter 1

General provisions

Article 1

The Act shall specify:

- 1) the commencement, scope and termination of the employment relationship of a judge of the Constitutional Tribunal (hereinafter: ‘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.

Article 2

1. The Tribunal shall be composed of 15 judges.
2. A judge of the Tribunal shall be elected by the Sejm. The term of office of the said judge shall be 9 years. The terms of election and dates for carrying out proceedings shall be specified by the rules of procedure of the Sejm¹.

Article 3

Judges of the Tribunal shall be chosen from among persons distinguished by their knowledge of law who also hold qualifications required for the office of a judge of the Supreme Court or for the office of a judge of the Supreme Administrative Court.

Article 4

1. A person elected to assume the office of a judge of the Tribunal shall take the following oath

¹ The full text of an English translation of the rules of procedure of the Sejm (officially entitled: *The Standing Orders of the Sejm of the Republic of Poland*) is available at the Sejm’s website: http://oide.sejm.gov.pl/oide/en/index.php?option=com_content&view=article&id=14798:the-standing-orders-of-the-sejm-of-the-republic-of-poland&catid=7&Itemid=361 ; for the sake of brevity, in the translation of the Act, the Sejm’s document is consistently referred to as ‘the rules of procedure of the Sejm’.

in the presence of the President of the Republic of Poland:

“I solemnly declare that, by fulfilling my duties as a judge of the Constitutional Tribunal, I will faithfully serve the Polish Nation and safeguard the Constitution of the Republic of Poland, and that I will do so with impartiality and with the utmost diligence.”. The oath may be taken by adding the following wording: “So help me God”.

2. Refusal to take the oath of office shall be tantamount to resignation from the office of a judge of the Tribunal.

Article 5

A judge of the Tribunal shall commence his/her employment relationship after taking the oath of office. After taking the oath of office, a judge of the Tribunal shall arrive at the Tribunal to assume judicial duties; the President of the Tribunal shall assign cases to the judge and create conditions that make it possible to perform the judicial duties.

Article 6

A judge of the Constitutional Tribunal, in the exercise of his/her office, shall be independent and subject only to the Constitution.

Chapter 2

The rights and obligations of a judge of the Tribunal

Article 7

A judge of the Tribunal shall act in accordance with the Code of Ethics for the Judges of the Constitutional Tribunal, adopted by the General Assembly of the Judges of the Constitutional Tribunal (hereinafter: ‘the General Assembly’).

Article 8

The total number of the working hours of a judge of the Tribunal shall be determined by the scope of his/her duties.

Article 9

A judge of the Tribunal shall be authorised to access confidential information related to a case considered by the Tribunal.

Article 10

1. A judge of the Tribunal may not belong to a political party or a trade union, or carry out public activities incompatible with the principles of the independence of courts and judges.

2. A judge of the Tribunal may not take up additional employment, except for scholarly research

or teaching, or a combination of the two, performed for one employer for a number of hours not exceeding the limit provided for full-time employment in the said professions, and as long as those responsibilities do not hinder the performance of judicial duties in the Tribunal.

3. A judge of the Tribunal may not take up any, economic or other, activity which would hinder the performance of judicial duties, could undermine the dignity of the office, or might weaken the trust in the judge's impartiality or independence.

4. An intention to take up employment or any other activity, referred to in paras 2 and 3, as well as an intention to continue it, by a judge taking office in the Tribunal shall be notified to the President of the Tribunal by the said judge. The President of the Tribunal shall provide written notification of objection if s/he deems that the taking up or continuing of the said employment or any other activity will hinder the performance of judicial duties, undermine the dignity of the judge, or weaken the trust in the judge's impartiality or independence.

Article 11

1. A judge of the Tribunal may not:

1) be a member of the management board, supervisory board or audit committee of a company established under commercial law;

2) be a member of the management board, supervisory board or audit committee of a cooperative;

3) be a member of the management board of a foundation carrying out economic activity;

4) hold more than 10% of shares in a joint-stock company or hold shares that make up more than 10% of the share capital of a limited liability company;

5) carry out economic activity as a self-employed person or together with other persons, as well as manage such activity, or be a representative or an attorney involved in such activity.

2. A company established under commercial law shall denote a company or partnership to which the provisions of commercial law are applicable, including a company registered under foreign law.

3. Profits from shares in companies established under commercial law, as specified in para 1(4), shall be donated by a judge of the Tribunal for public purposes selected by the judge or shall be transferred to a separate bank account run by a bank indicated by the President of the Tribunal until 31 March of the year following the year when the shares were obtained. The judge of the Tribunal may use the funds accumulated in the bank account after the end of his/her term of office.

4. Failure to fulfil the obligation referred to in para 3 shall be tantamount to resignation from the office of a judge of the Tribunal.

Article 12

Election or appointment to the authorities of a company, cooperative or foundation in breach of the prohibitions set out in Article 11(1), points 1 to 3, shall be invalid *ex lege* and shall not be subject to entry in a relevant register.

Article 13

1. A judge of the Tribunal shall be obliged to provide the President of the Tribunal with a statement on the economic activity of his/her spouse prior to assuming the judgeship, as well as about the spouse's intention to undertake such activity or to change the nature of the activity during the judge's term of office.

2. The President of the Tribunal shall lodge the statement referred to in para 1 with the First President of the Supreme Court.

3. Information included in the statement referred to in para 1 shall not be confidential and shall be subject to publication in accordance with Article 14(7).

4. Where the obligation referred to in para 1 has not been fulfilled, the President of the Tribunal shall set an additional time-limit of 30 days for the judge of the Tribunal. Where the additional time-limit lapses and the obligation has still not been fulfilled, this shall be tantamount to resignation from the office of a judge of the Tribunal.

Article 14

1. A judge of the Tribunal shall submit his/her financial statement. The statement shall pertain to the judge's property as well as the joint property of the judge and his/her spouse.

2. The statement referred to in para 1 shall in particular include information on acquired funds, immovable properties, shares in companies established under commercial law, as well as on property that was subject to sale by tender and was acquired by the judge or his/her spouse from the State Treasury, or another state-owned legal entity, units of local self-government or the associations of the said units. The statement shall also include information about the conduct of economic activity or any roles taken up in the companies or cooperatives specified in Article 11(1), points 1 and 2.

3. The statement referred to in para 1 shall be submitted prior to taking up the office, and then annually until 31 March, as well as on the date of resignation from the office. The statement shall present the state of affairs as it is on the day of the submission of the statement.

4. The statement referred to in para 1 shall be submitted in two copies.

5. The statement referred to in para 1 shall be lodged by a judge of the Tribunal with the President of the Tribunal and by the President of the Tribunal with the First President of the Supreme Court.

6. The authority that has received the statement referred to in para 1 shall analyse the information included therein and shall provide one copy of the document to the head of the tax office of the judge's place of residence until 31 May.

7. The statement referred to in para 1 shall not be confidential. The President of the Tribunal shall publish the statements of the judges of the Tribunal – including the statement submitted by him/herself – in the Public Information Bulletin of the Constitutional Tribunal until 30 June annually.

8. Failure to fulfil the obligation referred to in para 1 shall be tantamount to resignation from the office of a judge of the Tribunal.

Article 15

1. The templates of the statements referred to in Article 13(1) shall be specified in annexes nos. 1 and 2 to the Act.

2. The template of the statement referred to in Article 14(1) shall be specified in annex no. 3 to the Act.

Article 16

1. The basic remuneration of a judge of the Tribunal shall be the multiple of a remuneration base obtained by applying the multiplier of 5.0.

2. The remuneration base used for the determination of the basic remuneration of a judge of the Tribunal in a particular year shall be the average remuneration in the second quarter of the previous year, as published in the Official Gazette of the Republic of Poland – *Monitor Polski* by the President of the Central Statistical Office, in accordance with Article 20(2) of the Act of 17 December 1998 on Old-Age and Disability Pensions from the Social Insurance Fund (Journal of Laws – Dz. U. of 2016, item 887).

3. If the average remuneration referred to in para 2 is lower than the average remuneration published for the second quarter of the year preceding the previous year, the former amount constituting the remuneration base used for the determination of the basic remuneration of a judge of the Tribunal shall be applied.

4. The remuneration of the President and Vice-President of the Tribunal shall correspond to the basic remuneration of a judge of the Tribunal, supplemented by a functional allowance determined on the basis of the remuneration base referred to in para 2, applying the respective multipliers of 1.2 and 0.8.

Article 17

A judge of the Tribunal whose place of residence is outside the capital city of Warsaw shall be eligible for free-of-charge accommodation in Warsaw, the reimbursement of travel expenses, and an allowance for separation from his/her family, as set forth in executive provisions issued

on the basis of Article 26(2a) of the Act of 16 September 1982 on the Employees of State Offices (Journal of Laws – Dz. U. of 2016 item 1511).

Article 18

1. The mandate of a judge of the Tribunal shall expire before the end of the judge's term of office in the case of:

- 1) the death of the judge of the Tribunal;
- 2) the said judge's resignation from the office;
- 3) the conviction of the said judge by a legally effective court judgment for a premeditated offence prosecuted *ex officio* or a premeditated fiscal offence;
- 4) a legally effective disciplinary ruling on the recall of the judge of the Tribunal from office.

2. The expiry of the mandate of a judge of the Tribunal shall be determined:

- 1) in circumstances referred to in para 1(1) – by the President of the Tribunal, issuing a decision;
- 2) in circumstances referred to in para 1(2)-(4) – by the General Assembly, issuing a resolution.

3. The President of the Tribunal shall forthwith provide the Marshal of the Sejm with the decision or resolution determining the expiry of the mandate of a judge of the Tribunal.

Article 18a

In the event of the death of a judge of the Tribunal, the following shall be applied accordingly: the provisions concerning benefits referred to in Article 101 and Article 102 of the Act of 27 July 2001 on the Organisational Structure of Common Courts (Journal of Laws – Dz. U. of 2018 item 23, as amended); as well as the provisions issued on the basis of Article 103 of the said Act.

Article 19

Within the scope not regulated in this Act – as regards the duties and rights of the judges of the Tribunal – the provisions on the duties and rights of the judges of the Supreme Court shall be applied accordingly.

Chapter 3

The immunity and personal inviolability as well as disciplinary responsibility of a judge of the Tribunal

Article 20

1. A judge of the Tribunal may not be held criminally liable or deprived of liberty without prior consent granted by the General Assembly.
2. Until the said consent is granted to hold a judge of the Tribunal criminally liable or to deprive the said judge of liberty, only urgent steps shall be taken with regard to that judge.
3. A judge of the Tribunal shall be neither detained nor arrested, except for cases when the judge has been apprehended in the commission of an offence and in which the judge's detention is necessary for securing the proper course of proceedings.
4. The President of the Tribunal shall be notified forthwith of any such detention and may order an immediate release of the person detained.

Article 21

1. An application for consent to holding a judge of the Tribunal criminally liable and an application for consent to depriving a judge of the Tribunal of liberty, if a prohibited act in question is subject to prosecution *ex officio*, shall be submitted by the Public Prosecutor-General.
2. An application for consent to holding a judge of the Tribunal criminally liable, if a prohibited act in question is subject to private prosecution, shall be submitted by a private prosecutor, after the said prosecutor has brought a court action.
3. The application referred to in para 2 shall be drafted and signed by an advocate or a legal adviser, except for instances when such applications are filed by the following persons in their own name: judges, public prosecutors, advocates, legal advisers, notaries public, professors of law, and scholars with a post-PhD degree in Law (Pl. *doktor habilitowany*).

Article 22

1. An application for consent to holding a judge of the Tribunal criminally liable and an application for consent to depriving a judge of the Tribunal of liberty shall be lodged with the President of the Tribunal.
2. The application shall mention the first and last name of a judge of the Tribunal, a prohibited act for which the judge is to be held criminally liable or deprived of liberty, as well as

the circumstances of the commission of the said act.

Article 23

1. Consent to a judge of the Tribunal being held criminally liable and consent to depriving a judge of the Tribunal of liberty shall be granted in a resolution of the General Assembly, adopted by an absolute majority of votes cast by the judges of the Tribunal participating in the General Assembly, no later than within one month as of the date of the submission of the application.
2. Before the resolution is adopted, the judge of the Tribunal whom the application concerns may provide an explanation to the General Assembly.
3. The judge of the Tribunal whom the application concerns shall not participate in the ensuing deliberation and vote.

Article 24

1. A judge of the Tribunal shall be subject to disciplinary proceedings before the Tribunal for a breach of provisions of law, conduct that undermines the dignity of the office of a judge of the Tribunal, a breach of the Code of Ethics for the Judges of the Constitutional Tribunal, or any other unethical conduct that may weaken trust in the said judge's impartiality or independence.
2. A judge of the Tribunal shall be subject only to disciplinary proceedings for any misdemeanours.

Article 25

1. In the disciplinary proceedings, the Tribunal shall adjudicate as a disciplinary court:
 - 1) in first-instance proceedings – by three judges of the Tribunal;
 - 2) in second-instance proceedings – by five judges of the Tribunal.
2. The composition of adjudicating benches shall be selected by a draw carried out by the President of the Tribunal. A draw to select judges for the disciplinary court of second instance shall not include the judges of the Tribunal who adjudicated in the first-instance proceedings.

Article 26

Notification that a judge of the Tribunal has committed misconduct referred to in Article 24(1) may be lodged with the President of the Tribunal by:

- 1) a judge of the Tribunal;
- 2) the President of the Republic of Poland upon application by the Public Prosecutor-General, after consulting the First President of the Supreme Court.

Article 27

1. The President of the Tribunal shall carry out a draw to select a judge of the Tribunal to act as a disciplinary officer (hereinafter: 'the disciplinary officer').
2. The disciplinary officer shall take preliminary steps to investigate circumstances that are necessary for determining the characteristics of misconduct, as well as shall hear the judge who is mentioned in the notification referred to in Article 26, unless there is no possibility of hearing the judge.
3. After the steps referred to in para 2 have been taken, if there are grounds for instituting disciplinary proceedings, the disciplinary officer shall institute disciplinary proceedings and provide the judge of the Tribunal with a written account of allegations. After having been notified about the allegations, within 14 days, the judge in question may provide an explanation as well as file evidentiary submissions.
4. After the lapse of the time-limit referred to in para 3, and where necessary – after obtaining further evidence, the disciplinary officer shall file an application for the consideration of a disciplinary case by the disciplinary court of first instance. The application shall comprise a precise description of the alleged act as well as justification.
5. If the disciplinary officer finds no grounds for instituting disciplinary proceedings upon request by a competent authority, the officer shall issue a decision on refusal to institute disciplinary proceedings. Within 7 days from the date of the service of the decision, the party that has submitted the notification referred to in Article 26 shall have the right to file an appeal to the disciplinary court of first instance.
6. The disciplinary court of first instance shall consider the appeal referred to in para 5 within 14 days from the date of filing the appeal. Where the decision on refusal to institute disciplinary proceedings is revoked, the recommendations of the disciplinary court as to further proceedings are binding for the disciplinary officer.

Article 28

A disciplinary ruling issued in second-instance proceedings may not be challenged by a cassation appeal.

Article 29

The disciplinary penalties shall be as follows:

- 1) a warning;
- 2) a reprimand;
- 3) a decrease in the remuneration of a judge of the Tribunal, in the amount ranging from 10% to 20% for the period of 2 years;
- 4) the recall of a judge of the Tribunal from office.

Article 30

In matters not regulated by this Act, with regard to disciplinary proceedings, the provisions 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) and the Act of 6 June 1997 – the Criminal Procedure Code (Journal of Laws – Dz. U. of 2016 item 1749) shall be applied accordingly.

Chapter 4

The status of a retired judge of the Tribunal

Article 31

After the end of his/her term of office, a judge of the Tribunal shall have the status of a retired judge of the Tribunal.

Article 32

1. A judge of the Tribunal may request early retirement if a competent medical practitioner from the Social Insurance Institution (Pl. *Zakład Ubezpieczeń Społecznych*) determines that, as a result of illness, disability or loss of strength, the judge is permanently incapable of performing the duties of a judge of the Tribunal.

2. In duly justified cases, a competent medical practitioner from the Social Insurance Institution may determine the permanent incapacity of a judge of the Tribunal to perform the judicial duties, on the grounds of illness, disability or loss of strength, upon request by the General Assembly.

3. A resolution on early retirement of a judge of the Tribunal, due to the judge's permanent incapacity for the performance of the judicial duties, shall be adopted by the General Assembly. The resolution shall determine a date when the judge of the Tribunal is to retire early, which will also mark the end of his/her term of office in the Tribunal.

Article 33

1. A retired judge of the Tribunal may not be a member of a political party or a trade union; the said judge may not carry out public activity that is incompatible with the principles of the independence of courts and their judges; however, the said judge shall have the right to voice opinions on public matters.

2. A retired judge of the Tribunal shall act in accordance with the Ethics Code for the Judges of the Tribunal and shall preserve the dignity of a retired judge of the Tribunal.

3. A retired judge of the Tribunal may not take up additional employment, except for scholarly research or teaching, or a combination of the two, for a number of hours not exceeding the limit provided for full-time employment in the said professions.

4. A retired judge of the Tribunal may not take up another, economic or non-economic, activity which would undermine the dignity of a retired judge of the Tribunal.

5. An intention to take up employment or any other activity, referred to in paras 3 and 4, as well as an intention to continue it, by a retired judge of the Tribunal shall be notified to the President of the Tribunal by the said judge. The President of the Tribunal shall provide written notification of objection if s/he deems that the taking up or continuing of the said employment, or any other activity, will breach the prohibitions referred to in para 1 or will undermine the dignity of a retired judge of the Tribunal.

Article 34

1. A retired judge of the Tribunal shall be subject to disciplinary proceedings for a breach of law, conduct that undermines the dignity of a retired judge of the Tribunal, a violation of the Ethics Code for the Judges of the Tribunal, or any other unethical conduct.

2. With regard to the disciplinary responsibility of a retired judge of the Tribunal, the provisions of Article 24(2), Articles 25-28 as well Article 30 shall be applied accordingly, and the following shall be disciplinary penalties:

- 1) a warning;
- 2) a reprimand;
- 3) a decrease in the pension of a retired judge of the Tribunal, in the amount ranging from 10% to 20% for the period of 2 years;
- 4) the deprivation of the status of a retired judge of the Tribunal.

Article 35

1. A retired judge of the Tribunal shall be eligible for a pension equivalent to 75% of his/her recent remuneration without a functional allowance. The said pension shall be indexed to changes in the basic remuneration of judges of the Tribunal.

2. A retired judge of the Tribunal shall receive the pension specified in para 1 as of the day after the date when s/he ceased to hold the office of a judge of the Tribunal, as long as the said judge has not acquired a right to another benefit in a higher amount than the pension of a retired judge of the Tribunal.

Article 36

1. A judge may lose his/her status of a retired judge of the Tribunal in the following cases:

- 1) when the retired judge of the Tribunal renounces the status;
- 2) when the retired judge of the Tribunal is convicted by a legally effective court judgment for a premeditated offence prosecuted *ex officio* or a premeditated fiscal offence;
- 3) when the retired judge of the Tribunal is deprived of the said status by a legally effective ruling.

2. The loss of the status of a retired judge of the Tribunal shall be determined by a resolution

of the General Assembly.

Article 37

With regard to a retired judge of the Tribunal, the provisions of Article 11(1) and (2), Article 12, Article 18a as well as Articles 20–23 shall be applied accordingly.

Article 38

1. Should a person obliged to file a statement referred to in Article 13(1) or Article 14(1) provide false information in the statement, s/he shall be subject to the penalty of the deprivation of liberty for up to 5 years.
2. Where the prohibited act specified in para 1 is of lesser significance, the perpetrator of the act shall be subject to a fine, or the penalty of the limitation or deprivation of liberty for up to a year.

Chapter 5

The final provision

Article 39

The Act shall enter into force on the date specified in 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*