European Rule of Law Mechanism: input from Member States (POLAND)

I. Justice System

A. Independence

1. Appointment and selection of judges and prosecutors

Pursuant to Article 179 of the Constitution of the Republic of Poland, judges are appointed by the President of the Republic of Poland, at the request of the National Council of the Judiciary, for an indefinite period of time. Under Article 144(3)(17) of the Polish Constitution, the appointment of judges is the prerogative of the President of the Republic of Poland – an act excluded from the Prime Minister's countersignature.

The clarifying standards of statutory rank (Act of 27 July 2001 – the Law on the Common Court System, Journal of Laws of 2020, item 365, as amended, hereinafter referred to as LCCS, the Act of 12 May 2011 on the National Council of the Judiciary, Journal of Laws of 2019, item 84, as amended, hereinafter referred to as NCJA) regulates the procedure for appointing a judge. Once the Minister of Justice has announced the vacancy, candidates may submit their applications via the ICT system supporting the procedure. Applications are submitted together with documents required by law, depending on the profession or status (judge, prosecutor, advocate, legal counsel, notary public, Professor in Law, Ph.D. (doktor habilitowany) in Law). Afterwards, the president of the competent court orders an evaluation of the candidates' qualifications by a designated judge. The candidate is assessed in turn by the board of the competent court. The information collected in this way is then transmitted, in the ICT system, to the National Council of the Judiciary, which evaluates the candidates. The Council considers and assesses all the submitted candidacies for a given judicial post on the basis of the position prepared by the team appointed within the Council and adopts a resolution including decisions on presenting to the President a motion to appoint a candidate to perform the office of a judge and presents to the President a resolution containing a motion to appoint a judge together with a justification and information on the remaining candidates and an assessment of all the candidates. If new circumstances come to light, the Council may, ex officio or at the request of a participant in the proceedings, reconsider the case and the President may also request a reconsideration. The President finalises the appointment of a judge.

Prosecutors of common organisational units of the prosecutor's office are appointed by the General Prosecutor on the motion of the National Prosecutor. Prior to appointment, the General Prosecutor may consult with the relevant board of prosecutors about the candidate (Article 74 of the Act of 28 January 2016. – Law on Public Prosecutor's Office (Journal of Laws of 2019, item 740 and of 2020, item 190, hereinafter referred to as LPPO).

The General Prosecutor appoints the first prosecutor post (district prosecutor) in the competition procedure, and in particularly justified cases, the General Prosecutor appoints for this post a candidate indicated in the motion of the National Prosecutor, without conducting the competition procedure (Article 80 LPPO).

2. Irremovability of judges, including transfers of judges and dismissal

Pursuant to Article 180(1) to (5) of the Polish Constitution: Judges are irremovable. The submission of a judge ex officio, suspension from office, transfer to another seat or position against their will may only take place by virtue of a court decision and only in cases specified in relevant law. A judge may be retired due to illness or loss of strength preventing them from exercising their office. The procedure and manner of appealing to the court is specified in detail in relevant law. The law defines the age limit at which judges are retired. In the event of a change in the court system or a change in the boundaries of court districts, a judge may be transferred to another court or retired, with full remuneration.
In accordance with LCCS, the submission of a judge ex officio may be effected by a disciplinary court ruling. Moreover, if the disciplinary court issues a resolution allowing a judge to be held criminally responsible for an intentional offence prosecuted by public indictment, it shall ex officio suspend the judge in their official activities.
Disciplinary court may also suspend a judge against whom disciplinary proceedings or proceedings for incapacitation have been instituted, and also if it passes a resolution allowing the judge to be held criminally responsible.
If the penalty of removing a judge from office has been imposed and the disciplinary court has not previously suspended the judge in their official duties, the judgement shall result in the suspension of the judge in their official duties.
Subsequently, if a judge is detained for being caught in the act of committing an intentional offence or if, due to the nature of the act committed by the judge, the seriousness of the court or important interests of the service require their immediate removal from the performance of their official duties, the president of the court or the Minister of Justice may order an immediate suspension in the official duties of the judge until the disciplinary court issues a resolution, no longer than for a month. The president of the court or the Minister of Justice shall notify the disciplinary court of the issue of the order, within three days of its issue, which shall immediately, not later than before the expiry of the period for which the suspension was ordered, issue a resolution suspending the judge in their official activities or revoking the order for the suspension in the performance of those duties.
With regard to the transfer of a judge within the same court, it should be pointed out that the president of the court may establish a new distribution of the functions of judges at any time, if this is justified by the need to ensure the proper distribution of judges, associate judges and division officials in the divisions of the court and an even distribution of their duties and the need to guarantee the smooth running of the court proceedings, and, if this would result in the transfer of a judge to another division, it requires the consent of the judge. However, the consent of the judge to transfer to another division is not required, if: 1) the transferred judge is assigned to a division where cases of the same scope are examined; 2) no other judge in the division from which the transfer is made has consented to the transfer; 3) the transferred judge is assigned to a land and mortgage registers division or a commercial division for the register of pledges (to which only court registrars are assigned, unless this is not possible). The provisions of points 1 and 2 do not apply to a judge who has been transferred to another division for three years without their consent. When a judge is transferred to another division without their consent in the case referred to in point 2, particular account shall be taken of the judges' seniority in the division from which the judge is transferred.
A judge or associate judge who has changed the division of activities in a way that results in a change in the scope of their duties, in particular a transfer to another division of the court, may appeal to the National Council of the Judiciary, but is not entitled to do so in the case of: 1) transfer to a division where cases of the same scope are handled, 2) entrusting duties in the same division in accordance with the rules applicable to other judges, and in particular the cancellation of assignments to a division or other form of specialisation. The National Council of the Judiciary adopts a resolution accepting or dismissing a judge's appeal, and a resolution of the National Council of the Judiciary is non-appealable.
A judge may be transferred to another official place (to another court) by the ruling of disciplinary court, under one of the disciplinary penalties.
Furthermore, a judge may be transferred to another place of employment only with their consent, and the judge's consent to the transfer is not required in cases of: 1) the abolition of the position developed by a change in the organisation of the judiciary or the abolition of a given court or a local division or the transfer of the seat of the court, 2) the inadmissibility of holding the position of a judge in a given court due to the occurrence of circumstances of remaining in the relationship of kinship in a straight line or

affinity in a straight line or in the relationship of adoption, marriage and in case of being a sibling with another judge, associate judge or division official at the same division of the court; 3) when required by the seriousness of the position, on the basis of a decision of the disciplinary court, issued at the request of the board of the competent court or the National Council of the Judiciary; 4) transfer as a result of a disciplinary penalty (as already mentioned above). The transfer of a judge shall be decided by the Minister of Justice, whereas the transfer of a judge for the reasons set out in point 1 may take place if it is not possible to grant a judge's request for a new place of employment. In the cases referred to in points 1 and 2, the judge may appeal against the decision of the Minister of Justice to the Supreme Court.

A judge may also be retired. A judge shall be retired at their request or at the request of the board of the competent court if, due to illness or loss of strength, the judge has been declared permanently incapable of performing the duties of a judge by a certifying physician of the Social Insurance Institution. A request for retirement and for an examination of incapacity to perform the duties of a judge and a ruling may be made by the judge concerned or by the board of the competent court. In the case of a judge acting as president of a regional court and appeal court, the Minister of Justice may also file a request. The judge concerned or the board of the competent court may raise objection to the medical certificate of the certifying physician to the medical board of the Social Insurance Institution, within 14 days from the date of delivery of the certificate.

A judge may also be retired if, without good reason, they have not undergone an examination assessing the occurrence of a condition of incapacity to perform their duties, if the examination was requested by the board of a court or the Minister of Justice.

A judge may also be retired, at the request of the Minister of Justice, in the event of a change of court system or change of boundaries of court regions, if they have not been transferred to another court.

In the cases of a retired judge referred to above, the decision is taken by the National Council of the Judiciary, at the request of a judge, a board of a competent court or the Minister of Justice. The ruling of the National Council of the Judiciary can be appealed to the Supreme Court.

In accordance with Article 180(1) of the Constitution of the Republic of Poland, the judges are irremovable. Pursuant to Section (2) of the above mentioned article, removal of a judge from office, suspension from office, transfer to another seat or position against their will may only take place by virtue of a court decision and only in cases specified in relevant law. Furthermore, in accordance with Section (5) of the above mentioned article, in the event of a change in the court system or a change in the boundaries of court districts, a judge may be transferred to another court or retired, with full remuneration.

When appointing a judge to office, the President of the Republic of Poland designates the judge's place of office (seat). A change of a judge's place of employment may be made without a change of position in the cases and pursuant to the procedure specified in Article 75 (Article 55(3) LCCS).

A judge may be transferred to another place of employment only with their consent.

The consent of the judge to the transfer to another place of employment is not required in cases of:

1) the abolition of a position caused by a change in the organisation of the judiciary or the abolition of a given court or division or transfer of the seat of the court;
2) inadmissibility of holding the position of a judge in a given court as a result of the circumstances referred to in Article 6 (persons having a relationship of kinship or affinity in a straight line or in a relationship of adoption, spouses and siblings cannot be judges, associate judges or division officials at the same court division);
3) where the seriousness of the position requires so, on the basis of a disciplinary court decision issued at the request of the board of the competent court or the National Council of the Judiciary;
4) transfer as a result of a disciplinary penalty.

The transfer of a judge shall be decided by the Minister of Justice in cases set out in points 1 and 2, whereas the transfer of a judge for the reasons set out in point 1 may take place if it is not possible to grant a judge's request for a new place of employment. In the cases referred to in points 1 and 2, the judge may appeal against the decision of the Minister of Justice to the Supreme Court (Article 75 LCCS).

Moreover, a judge interested in transferring to another official position may submit a request for transfer within seven days of the announcement of the vacancy, and the Minister of Justice shall issue a decision on the judge's request for transfer to another official position, with a view to the rational use of the staff of the common courts, the needs arising from the workload of individual courts, as well as circumstances

arising from the justification of the request. On the other hand, if the request is not granted, a judge may submit a further request for transfer not earlier than after 3 years, unless the reason for refusing the request was only the lack of a sufficient number of vacant judge positions in relation to the number of requests (Article 75b(2)-(4) LCCS).
The removal of a judge from office may only result from the issuance of a disciplinary penalty by the disciplinary court (Article 109(1)(5) LCCS) or the final conclusion of the criminal proceedings against the judge against whom a judgement has been passed which, according to the Criminal Law, results in the removal from office (Article 120 LCCS). A final judgement of a disciplinary court on the removal of a judge from office and a final decision of a punitive measure in the form of deprivation of public rights or a ban on holding the position of a judge entails, by law, the loss of office and position of a judge; the public service relationship of a judge expires when the decision or judgement becomes final. The public service relationship of a judge also expires on the day they lose Polish citizenship (Article 68(2) and (3) LCCS).

3. Promotion of judges and prosecutors

Judicial promotions for senior judicial positions in higher courts take place on the same basis as the nomination procedure described for candidates for non-judicial positions. A judge applies for a vacant judge's post in a higher court, submits the required documents, is subject to an evaluation of qualifications and an opinion, after which their candidacy is forwarded to the National Council of the Judiciary, which makes the final evaluation of the candidacy and decides on the presentation to the President of the application for the appointment the office of a judge in relation to the candidates. The decision on the appointing a judge belongs to the President.
For the higher-tier prosecutorial position (without a competition procedure), the General Prosecutor, on the motion of the National Prosecutor, may appoint a prosecutor, after they have acquired adequate seniority. In particularly justified cases, in order to ensure the proper performance of the statutory tasks of the prosecutor's office, the General Prosecutor, at the request of the National Prosecutor, may appoint a prosecutor to perform their duties in the National Prosecutor's Office, in the regional prosecutor's office or in the district prosecutor's office, without prejudice to the internship requirements (Article 76 LPPO).
Pursuant to Article 179 of the Constitution of the Republic of Poland, judges are appointed by the President of the Republic of Poland, at the request of the National Council of the Judiciary, for an indefinite period of time. The procedure for the appointment of judges to office and their advancement to higher tiers of the common judiciary is defined by a number of normative acts.
The major one is the Act of 27 July 2001 – the Law on the Common Court System, Journal of Laws of 2020, item 365, as amended, hereinafter referred to as LCCS). The political system act sets out both the general formal requirements for a person who may hold a judicial post (Article 61(1) LCCS), including in a district court (Article 61(2) and (5) LCCS), and the requirements for taking up a judicial position in higher-level courts, i.e. a regional court (Article 63 LCCS) and a court of appeal (Article 64 LCCS).
The procedure for appointing a judge is as follows. Anyone who meets the conditions for taking up the position of a judge of a common court (i.e. a judge of a district, regional and appeal court – Article 55 LCCS) may submit their candidacy for one of the judicial posts announced by the Minister of Justice in Monitor Polski (Article 57(1) and Article 57ab(1) LCCS). The procedure for the selection of a candidate for a vacant judge is a competition.
The competent president of the court to which the application was submitted shall order the assessment of the candidate's qualifications (Article 57ah(1) LCCS). When assessing a candidate's qualifications for a vacant judicial post, the candidate's personality predispositions for the profession of judge and compliance with the rules of professional ethics (Article 57i LCCS) are taken into account.
The above-described evaluation of qualifications in relation to judges includes examination of the merits of the case law and the efficiency and effectiveness of the activities undertaken and the organization of work in the examination of cases or the performance of other entrusted tasks or functions, taking into account the degree of workload and their complexity, the implementation of the process of professional development, as well as the culture of office, including personal culture and culture of work organization

and respect for the rights of the parties or participants in the proceedings in the examination of cases or the performance of other entrusted tasks or functions (Article 57b(1) LCCS).
Criteria for the evaluation of the candidates that are adequate and consistent with the ones presented above also refer to the other persons entitled to apply for the judicial post, i.e.: prosecutors (Article 57e LCCS), advocates, legal counsels, solicitors of the Treasury and notaries (Article 57f LCCS), academics (Article 57g LCCS) and the president and vice-president of the State Treasury Solicitor's Office (Article 57h LCCS).
These rules also cover candidates for judicial posts from among persons employed as division officials and associate judges (Article 18 of the Act of 11 May 2017 amending the Act on the National School of the Judiciary and Public Prosecution, the Act - the Law on the Common Court System and certain other acts).
Detailed rules for evaluating candidates for vacant judicial posts are set out in the Regulation of the Minister of Justice of 18 July 2019 on the evaluation of qualifications of a candidate for a vacant judicial position (Journal of Laws 2019, item 1367). These refer to the statistical analysis of the candidate's work, the assessment of their efficiency and quality in terms of merit (with particular reference to the judicial error identified), as well as the culture of the office.
After the assessment of qualifications, each candidate is informed of the result of the assessment, on which they may comment (Article 57ah(4) LCCS).
The applications for the vacant judicial position are subject to the opinion of the board of the competent regional court or court of appeal (Article 29(1)(1a), Article 31(1a) and Article 58(1) LCCS). Members of the judicial self-government, i.e. delegates to the boards of regional courts and courts of appeal (Article 34(1)(2), Article 36(1)(2) LCCS) may participate in the boards of the above courts.
Opinions on the applications, together with the qualifying assessments and all the documentation submitted by the candidate and collected by the competent authorities are transmitted in an ICT system to the National Council of the Judiciary (hereinafter: Council), which examines the candidates for the positions of judges of common courts (Article 60 LCCS).
The competences of the National Council of the Judiciary include, among other things, evaluating candidates for office, among others, in judicial positions in common courts (Article 3(1)(1) of the National Court Register Act). For the purpose of the evaluation referred to above, the Council teams are formed. They prepare a reasoned position and an assessment of candidates for judicial positions, which is then presented at the Council meeting.
If more than one candidate has applied for a judicial position, the team draws up a list of recommended candidates. When determining the order of the candidates on the list, the team is primarily guided by the assessment of the candidates' qualifications and, in addition, takes into account: professional experience, including experience in applying the law, academic achievements, opinions of superiors, recommendations, publications and other documents attached to the application form, the opinion of the board of the competent court and the assessment of the competent general meeting of judges. If more than one candidate has applied for a judicial post, the Council considers and assess all the applications together. In such a case, the Council adopts a resolution covering the decisions on the presentation of the application for appointment to the office of a judge in relation to all candidates.
The participant of the competition proceedings may appeal to the Supreme Court against the resolution of the Council as unlawful, unless separate regulations provide otherwise.
The final stage of the proceedings before the Council is the presentation to the President of the Republic of Poland of a resolution containing a motion for the appointment of associate judge in a common court together with justification.

4. Allocation of cases in courts

In accordance with Article 12 LCCS, the following divisions may be created in the district court:
1) civil division – for cases in the field of civil law, family and guardianship law, cases concerning demoralisation and punishable acts of minors, treatment of persons addicted to alcohol, drugs and psychotropic drugs, and cases belonging to the guardianship court under separate acts;
2) criminal division – for criminal law cases;

3) family and juvenile division – for cases in the field of family and guardianship law, cases concerning demoralisation and punishable acts of minors, treatment of persons addicted to alcohol and drugs and psychotropic drugs, and cases belonging to the guardianship court under separate acts;
4) labour division, social insurance division or labour and social insurance division – for matters relating to labour law or social insurance respectively;
5) commercial division – for commercial matters and other matters of commercial and civil law falling within the capacity of a commercial court under separate laws;
6) land and mortgage register division – to keep land and mortgage registers;
7) enforcement division – to hear cases a) of granting an enforcement clause to the enforcement titles referred to in Article 777(1) (3)-(6) and Article 781(2) of the Act of 17 November 1964 – the Code of Civil Procedure (Journal of Laws of 2019, item 1460, as amended), including also in the cases referred to in Article 7781, Article 787, Article 7871, Article 788 and Article 788 of the Act of 17 November 1964. 789 of this Act, provided that the granting of an enforcement clause does not fall within the jurisdiction of commercial courts, b) for the granting of an enforcement clause to the enforcement title, which is a final or immediately enforceable verdict issued by a court or division official in the enforcement department, c) from complaints against the actions of a division official made under the provisions of the Act of 17 November 1964 – the Code of Civil Procedure and the cases in which these provisions apply accordingly, d) under Article 759(2) of the Act of 17 November 1964 – the Code of Civil Procedure, e) for the exclusion of the division official, f) for the appointment of a superintendent in the enforcement proceedings, g) for the issue of a certificate for the enforcement titles referred to in Article 7951(2) of the Act of 17 November 1964 – the Code of Civil Procedure, h) pursuant to Article 8011(2), Article 807(1), Article 813, Article 8202 and Article 8211 of the Act of 17 November 1964 – the Code of Civil Procedure, i) under Article 115316 and Article 115318 of the Act of 17 November 1964 – the Code of Civil Procedure, j) referred to in Titles II and III of Part Three of the Act of 17 November 1964 – the Code of Civil Procedure, to the extent reserved for the competence of the court, excluding family and guardianship law cases and cases for the disclosure of assets, k) for exemption from court fees prior to the initiation of proceedings in the cases referred to in the preceding regulations, and exemption from bailiff costs.
In accordance with Article 16 LCCS, the following divisions may be created in regional court:
1) civil division – for cases in the field of civil law, family and guardianship law, cases concerning the treatment of persons addicted to alcohol, drugs and psychotropic drugs, cases belonging to the guardianship court under separate acts and demoralisation and punishable acts of minors;
2) criminal division – for criminal law cases and cases of truthfulness of vetting statements;
3) labour division, social insurance division or labour and social insurance division – for matters relating to labour law or social insurance respectively;
4) commercial division – for commercial matters and other matters of commercial and civil law falling within the capacity of a commercial court under separate laws;
5) control of telecommunications, postal and Internet data division – for matters related to the control of the acquisition of telecommunications, postal and Internet data by the Police, the Internal Security Agency, the Border Guard, the Central Anti-Corruption Bureau, the State Protection Service, the Customs and Fiscal Service and the Internal Supervision Office.
Pursuant to Article 18 LCCS, the court of appeal entail the following divisions:
1) civil division – for cases in the field of civil law, family and guardianship law, as well as commercial cases and other cases in the field of commercial and civil law belonging to commercial court under separate acts;
2) criminal division – for criminal law cases and cases of truthfulness of vetting statements;
3) labour and social insurance division – for labour and social insurance law cases.
Concurrently, in accordance with Article 20 LCCS, the Minister of Justice, after consulting the National Council of the Judiciary, by way of regulations:
1) establishes and abolishes courts and determines their seats, areas of jurisdiction and the scope of the cases they handle,
2) may delegate to one regional court the examination of labour or social insurance law cases from the jurisdiction or part of the jurisdiction of other district courts operating in the same appellate district, and to one district court the examination of labour or social security law cases from the jurisdiction or part of the jurisdiction of other district courts operating in the same court region,

3) may delegate to one regional court the examination of commercial cases and other cases of commercial and civil law, belonging to a commercial court under separate acts, from the jurisdiction or part of the areas of jurisdiction of other regional courts, operating within the same appellate district, and to one district court the examination of commercial cases and other cases of commercial and civil law, belonging to a commercial court under separate acts, from the jurisdiction or part of the areas of jurisdiction of other district courts,
4) may delegate to one regional court the examination of cases of truthfulness of vetting statements from the jurisdiction of other regional courts operating in the same appellative district,
5) may delegate to one district court the examination of cases in the field of family and guardianship law, cases concerning demoralisation and punishable acts of minors, treatment of persons addicted to alcohol, drugs and psychotropic drugs and cases belonging to the guardianship court under separate acts, from the jurisdiction or part of the areas of jurisdiction of other district courts, operating in the same court region,
6) may delegate to one district court the keeping of land and mortgage registers from the jurisdiction or part of the jurisdiction of other district courts operating in the same court region,
7) may delegate to one district court the examination of cases in electronic proceedings by writ of payment from the jurisdiction of other district courts,
8) may delegate to one district court the examination of applications for a declaration of enforceability of decisions issued by the Council, the European Commission, the European Central Bank, the Office for Harmonisation in the Internal Market and judgements of the Court of Justice of the European Union from the jurisdiction of other district courts,
9) designates a single district court competent to examine cases concerning the protection of EU trade marks and Community designs (EU Trade Mark and Community Design Court),
10) may delegate to one district court the examination of cases falling under the jurisdiction of enforcement divisions from the jurisdiction or part of the jurisdiction of other district courts.

5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Pursuant to Article 187(1) of the Constitution, the National Council of the Judiciary consists of: 1) the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and a person appointed by the President of the Republic of Poland, 2) fifteen members elected from among judges of the Supreme Court, common courts, administrative courts and military courts, 3) four members elected by the Sejm from among MPs and two members elected by the Senate from among senators. Pursuant to Article 187(3) and (4) of the Constitution, the term of office of the elected members of the National Council of the Judiciary is four years, and the system, scope of operation and mode of work of the National Council of the Judiciary and the manner of its election is determined by law.
Pursuant to Article 9a NCJA, the Sejm elects fifteen members of the Council from among the judges of the Supreme Court, common courts, administrative courts and military courts for a common four-year term of office, and when making the election, the Sejm takes into account, as far as possible, the need for representation in the Council of judges of particular court types and tiers. The entities entitled to propose a candidate for a member of the Board comprise the group of at least: 1) two thousand citizens of the Republic of Poland who are eighteen years of age, have full legal capacity and enjoy full public rights, 2) twenty five judges, excluding retired judges. Pursuant to Article 11d(5) NCJA, the Sejm elects the members of the Council (judges) for a joint four-year term of office by a majority of 3/5 votes in the presence of at least half of the statutory number of Members by voting on a list of candidates established by the competent committee of the Sejm (the list includes at least one candidate indicated by each parliamentary club which operated within sixty days of the first session of the Sejm during which the election is made). In case of failure to elect the members of the Council in the above mentioned procedure, the Sejm elects the members of the Council by an absolute majority of votes in the presence of at least half of the statutory number of members.
Pursuant to Article 3 of the NCJA, the competence of the National Council of the Judiciary includes:

1) examining and evaluating candidates for the positions of judges of the Supreme Court and for judicial positions in common courts, administrative courts and military courts and for judicial assessors in administrative courts;
2) presenting to the President of the Republic of Poland motions for appointment of judges in the Supreme Court, common courts, administrative courts and military courts and for appointment of associate judges in administrative courts;
3) presenting to the President of the Republic of Poland motions for the appointment of the examined trainee judges and prosecutors to the positions of associate judges in common courts;
4) adopting a set of rules of professional ethics for judges and associate judges and ensure their observance;
5) commenting on the state of the staffing of judges and associate judges;
6) expressing a position on matters concerning the judiciary, judges and associate judges, brought to its deliberations by the President of the Republic of Poland, other public authorities or judicial self-government bodies;
7) presenting opinion on draft legislation concerning the judiciary, judges and associate judges, and giving proposals in this regard;
8) giving opinions on training programmes within the framework of a judge trainee programme, the scope and manner of conducting competitions for a judge trainee programme, and on the judge exams;
9) giving opinion on the annual schedules of training activities as regards training and professional development of judges, associate judges and court employees.

Furthermore, the Council performs other tasks specified in relevant acts, in particular:

1) adopts resolutions in cases of applying to the Constitutional Tribunal to examine the conformity of normative acts with the Constitution of the Republic of Poland in so far as they concern the independence of courts and the independence of judges;
2) processes motions to retire a judge;
3) processes applications by retired judges to return to judicial office;
4) appoints the disciplinary officer for common courts' judges and associate judges and the disciplinary ombudsman for military court judges;
5) expresses its opinion on the appeal of the president or vice-president of a common court and the president or vice-president the military court;
6) appoints one member of the Programme Council of the National School of Judiciary and Public Prosecution;
7) expresses its opinion on the appointment and dismissal of the Director of the National School of Judiciary and Public Prosecution;
8) supervises the processing of personal data by the Constitutional Tribunal, the State Tribunal, the Supreme Court, the Supreme Administrative Court and courts of appeal, in the framework of their proceedings.

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

Pursuant to Article 107 of the LCCS, a judge is liable for official (disciplinary) misconduct, including:

1) an obvious and flagrant breach of law;
2) acts or omissions likely to obstruct or significantly impair the functioning of the judiciary;
3) actions questioning the existence of a judge's official relationship, the effectiveness of the appointment of a judge, or the legitimacy of the constitutional authority of the Republic of Poland;
4) public activity that is incompatible with the principles of judicial independence and the independence of judges;
5) a violation of the dignity of the office.

A judge also bears disciplinary responsibility for their conduct before taking up the post if they have failed to discharge the duties of the state office they had held at that time or have proven themselves unworthy of the office of judge.

As far as limitation periods are concerned, it should be pointed out that disciplinary proceedings cannot be initiated five years after the act has been committed. Where disciplinary proceedings are instituted before the lapse of the time limit referred to in (1), the disciplinary statute of limitations expires eight years after the act has been committed. If, however, the disciplinary misconduct qualifies as offence, the disciplinary statute of limitations cannot take place earlier than the statute of limitations provided for in the provisions of the Criminal Code. The disciplinary statute of limitations shall not proceed in the course of disciplinary proceedings, starting from the date of submission of the request to the disciplinary court until the date of valid completion of disciplinary proceedings. This does not apply where the subject of the request is to hold a judge liable to disciplinary action for a misdemeanour or fiscal offence. (Article 108 LCCS).

Pursuant to Art. 109 LCCS, disciplinary penalties include:

1) admonition;
2) reprimand;
3) reduction of basic remuneration by 5%-50% for a period from six months to two years;
4) a penalty payment in the amount of one month's basic remuneration to be paid for the month preceding the final conviction, increased by the judge's long-service allowance, function allowance and special allowance;
5) removal from the current function;
6) transfer to another official position;
7) removal of the judge from office.

According to Article 110 LCCS, the disciplinary cases concerning judges are adjudicated by:

1) in the first instance:

a) disciplinary courts attached to courts of appeal composed of three judges,

b) the Supreme Court in the composition of two judges of the Disciplinary Chamber and one lay judge of the Supreme Court in cases of disciplinary misconducts bearing the hallmark of intentional crimes prosecuted by public prosecution or intentional fiscal offences or cases in which the Supreme Court has requested that a disciplinary case be examined together with a reproach for misconduct, and in cases involving actions challenging the existence of a judge's official relationship, the effectiveness of the appointment of a judge, or the legitimacy of the constitutional authority of the Republic of Poland;

2) in the second instance, the Supreme Court composed of two judges of the Disciplinary Chamber and one lay judge of the Supreme Court.

Pursuant to Article 112 LCCS, the accusers before the disciplinary court are the Disciplinary Officer for Common Courts' Judges and the Deputy Disciplinary Officer for Common Courts' Judges, as well as the deputy disciplinary commissioner at appellate court and the deputy disciplinary commissioner at regional court, whereby the Disciplinary Officer for Common Courts' Judges and the Deputy Disciplinary Officer for Common Courts' Judges may undertake and conduct activities in any case involving a judge. The Disciplinary Officer for Common Courts' Judges and two Deputy Disciplinary Officers for Common Courts' Judges are appointed by the Minister of Justice for a term of four years. Deputy disciplinary commissioner attached to a court of appeal is appointed for a four-year term of office by the Disciplinary Officer of Common Courts' Judges from among the judges of that court or regional court judges in the jurisdiction of that court of appeal. Deputy disciplinary commissioner attached to a regional court is appointed by the Disciplinary Officer of Common Courts' Judges for a four-year term of office from among the judges of that court or district court judges from the area of jurisdiction of that regional court.

Moreover, according to Article 80 LCCS, a judge cannot be detained or held criminally responsible without the permission of the competent disciplinary court. This does not apply to detention when a judge is caught in the act of committing an offence, if the detention is necessary to ensure the proper course of proceedings. Until a resolution is passed to allow a judge to be held criminally responsible, only urgent actions may be taken. The president of the court of appeal competent for the place of detention is immediately notified of the detention. They may order immediate release of the detained judge. The president of the court of appeal immediately notifies the National Council of the Judiciary, the Minister of Justice and the First President of the Supreme Court of the detention. The disciplinary court issues a resolution allowing a judge to be held criminally responsible if there is a sufficiently justified suspicion that they have committed an offence.

Pursuant to Article 81 LCCS, a judge is liable for misdemeanour only with disciplinary responsibility, whereas the judge may agree to be held criminally responsible for offences against security and order in communication, which excludes disciplinary responsibility.
The Set of Ethical Principles for Judges is determined by the Resolution No 25/2017 of the National Council of the Judiciary of 13 January 2017 on the announcement of the consolidated text of the Set of Ethical Principles for Judges and Associate Judges, pursuant to Article 3(1)(3) NCJA.
A prosecutor and the General Prosecutor may not be held criminally responsible or under temporary arrest without the permission of the disciplinary court and the detainee – without the permission of their disciplinary superior. This does not apply to detention *in flagrante delicto*. Until a prosecutor or the General Prosecutor can be held criminally responsible, only urgent actions may be taken, with immediate notification of the prosecutor's superior.
In the case of the Prosecutor General, the Prime Minister is to be notified (Article 135 LPPO). Preparatory proceedings against a prosecutor must be initiated and conducted exclusively by prosecutor (Article 136 LPPO).
The prosecutor is responsible for official (disciplinary) misconduct, including
1) an obvious and flagrant breach of law;
2) acts or omissions likely to obstruct or significantly impair the functioning of the judiciary or public prosecution;
3) actions questioning the existence of a judge's or prosecutor's official relationship, the effectiveness of the appointment of a judge or prosecutor, or the legitimacy of the constitutional authority of the Republic of Poland;
4) public activities that are incompatible with the principle of independence of the prosecutor;
5) a violation of the dignity of the office.
An act or omission by the prosecutor undertaken solely in the public interest shall not constitute a disciplinary offence.
A prosecutor also bears disciplinary responsibility for their conduct before taking up the post if they have failed to discharge the duties of the state office they had held at that time or have proven themselves unworthy of the office of prosecutor.
For the abuse of freedom of speech in the performance of official duties, which constitutes an insult to a party, their representative or advocate, superintendent, witness, expert or translator prosecuted by private prosecution, the prosecutor shall be liable only on disciplinary grounds (Article 137 LPPO).
Prosecutor is liable for misdemeanour only with disciplinary responsibility. However, prosecutor may agree to be held criminally responsible for offences against security and order in communication, which excludes disciplinary responsibility (Article 138 LPPO).
In the event of a significant breach in the efficiency of the preparatory proceedings, the superior prosecutor may admonish the prosecutor in writing and demand that the consequences of this breach be remedied. The General Prosecutor may admonish a provincial, regional and district prosecutor in writing in the event of a significant breach in the management or supervision of the prosecution service. This right also applies to the General Prosecutor in relation to the National Prosecutor and other Deputy General Prosecutors, to provincial prosecutor in relation to regional and district prosecutors operating in the region, and to regional prosecutor in relation to the subordinate district prosecutor. A copy of the letter containing the remark is attached to the prosecutor's personal file, which is removed after 2 years from the date on which the remark became final if no further failure to act has been found during this period (Article 139 LPPO).
In the case of an obvious breach of law in the conduct of a case, the superior prosecutor, regardless of other powers, reproaches the prosecutor for their misconduct, after requesting an explanation. A copy of the letter containing the reproach is attached to the prosecutor's personal file, which is removed after 2 years from the date on which the reproach became final, if no further misconduct was found within this period (Article 140 LPPO).
For petty disciplinary misconduct which does not justify the initiation of disciplinary proceedings, the superior prosecutor imposes the penalty of admonition on subordinate prosecutors (Article 149 LPPO).
A set of rules of professional ethics for prosecutors is adopted by the National Council of Prosecutors attached to the General Prosecutor (Article 43 LPPO).

7. Remuneration/bonuses for judges and prosecutors

Pursuant to Article 91 LCCS, the basis for determining the judge's basic remuneration in a given year is the average remuneration in the second quarter of the previous year, published in the "Monitor Polski" Official Journal of the Republic of Poland by the President of the Central Statistical Office pursuant to Article 20(2) of the Act of 17 December 1998 Old-Age and Disability Pensions from the Social Insurance Fund (Journal of Laws of 2020, item 53), and the amount of the judge's basic remuneration is determined at rates whose amount is determined using the multipliers of the basis for determining the basic remuneration. The rates of basic remuneration for particular positions of judges and multipliers used to determine the basic remuneration of judges at particular rates are set out in the annex to LCCS. There are ten rates and the corresponding multipliers range from 2.05 (first rate as a district court judge) to 3.23 (tenth rate as a court of appeal judge).
Pursuant to Article 91a LCCS, a judge holding a position in the district court is entitled to basic remuneration at the first rate. A judge taking up position at regional court is entitled to the fourth rate of the basic remuneration or, if they have already received the fourth or fifth rate remuneration for a lower position, to the fifth or sixth rate of the basic remuneration. A judge taking up position at the court of appeal is entitled to the basic remuneration at seventh rate or, if they have already received remuneration at seventh or eighth rate for a lower position, to the basic remuneration at eighth or ninth rate, respectively. The basic remuneration of a judge is determined at the rate immediately higher after five consecutive years of service in a given judicial post.
The remuneration of judges holding equivalent judicial positions is differentiated by seniority or function – the seniority allowance is, from the sixth year of service, 5% of the basic remuneration and increases after each year by 1%, until it reaches 20% of the basic remuneration, and due to the function the judge is entitled to a functional allowance.

No social security contributions are paid on judges' remuneration.
The basic prosecutor's remuneration is set in rates, the amount of which is determined using multipliers (indicated by the Council of Ministers by way of a regulation) of the basis for determining the basic prosecutor's remuneration, which is the average remuneration in the second quarter of the previous year.
The remuneration of prosecutors holding equivalent prosecutorial positions is differentiated by seniority or function. The basic remuneration of district and regional prosecutor is equal to the basic remuneration of judges in the same organisational units of common courts. The basic remuneration of prosecutor at provincial prosecutor's office is equal to the basic salary of appellative court judges. The basic remuneration of prosecutor at National Prosecutor's Office is equal to the basic salary of Supreme Court judges.
The basic remuneration of a prosecutor is determined at the rate immediately higher after five consecutive years of service in a given prosecutorial post.
In connection with their function, prosecutor is entitled to a functional allowance. The list of functions performed by prosecutors and the amounts of functional allowances to which they are entitled in connection with their performance is determined by the Council of Ministers by way of a regulation.
Prosecutor is also entitled to seniority allowance amounting to, 5% of the basic remuneration currently received by the prosecutor starting from the 6th year of service and increasing after each consecutive year of work by 1% of this remuneration, up to 20% of the basic remuneration. After 20 years of work, the allowance is paid, irrespective of the length of service beyond that period, in the amount of 20% of the basic remuneration currently received by the prosecutor (Articles 123 and 124 LPPO).
Prosecutors who show initiative in their work, perform their duties exemplarily and conscientiously and make a particular contribution to the performance of their duties may be awarded awards and distinctions by the General Prosecutor or the National Prosecutor. The types of distinctions and awards and the procedure for granting them is determined by the General Prosecutor. The award may also involve a promotion earlier than provided for in the provisions concerning remuneration or appointment to a higher official position or in special provisions. For this purpose, the General Prosecutor or the National Prosecutor establishes award funds (Article 133 LPPO).
In accordance with Article 178(2) of the Constitution of the Republic of Poland, judges are guaranteed, *inter alia*, remuneration corresponding to the dignity of their office and the scope of their duties.
The remuneration of judges holding equivalent judicial positions is differentiated by seniority or function. The basis for determining the judge's basic remuneration in a given year is the average

remuneration in the second quarter of the previous year, published in the "Monitor Polski" Official Journal of the Republic of Poland by the President of the Central Statistical Office pursuant to Article 20(2) of the Act of 17 December 1998 Old-Age and Disability Pensions from the Social Insurance Fund. The basic prosecutor's remuneration is set in rates, the amount of which is determined using multipliers of the basis for determining the basic prosecutor's remuneration, as indicated above. The rates of basic remuneration for particular positions of judges and multipliers used to determine the basic remuneration of judges at particular rates are set out in the annex to the Law on the Common Court System Act (LCCS). In connection with their function, judge is entitled to a functional allowance. Furthermore, the judge's remuneration is differentiated by the seniority allowance is, from the sixth year of service, 5% of the basic remuneration and increases after each year by 1%, until it reaches 20% of the basic remuneration. No social security contributions are paid on judges' remuneration (Article 91 LCCS)
In addition to the remuneration determined in accordance with the above rules, the judge is also entitled to a jubilee gratification in the amount:

1) after twenty years of work – 100% of monthly remuneration;
2) after twenty-five years of work – 150% of monthly remuneration;
3) after thirty years of work – 200% of monthly remuneration;
4) after thirty-five years of work – 250% of monthly remuneration;
5) after forty years of work – 350% of monthly remuneration;
6) after forty-five years of work – 400% of monthly remuneration.

Concurrently, all previous completed periods of employment and other periods are included in the period of work entitling to the jubilee gratification, if by virtue of separate regulations they are included in the period of work on which the employee's rights depend (Article 92(3) and (4) LCCS).

8. Independence/autonomy of the prosecution service

The public prosecutor's office is composed of the General Prosecutor, the National Prosecutor, other deputies of the General Prosecutor, as well as prosecutors of common organizational units of public prosecutor's office and prosecutors of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation. The General Prosecutor is the chief prosecutorial authority. The office of the General Prosecutor is held by the Minister of Justice (Article 1 LPPO).
The General Prosecutor directs the activities of the prosecutor's office in person or through the National Prosecutor and other Deputy General Prosecutors by issuing orders, guidelines and instructions. The General Prosecutor is superior to all prosecutors (Article 13 LPPO).
Prosecutor is independent in the performance of the activities specified in relevant acts. However, they are obliged to carry out the orders, guidelines and instructions of the superior prosecutor. An order concerning the content of the procedural activity shall be issued in writing by the superior prosecutor, and, at the prosecutor's request, together with a justification. If the prosecutor does not agree with the order concerning the content of the procedural action, they may demand that the order be changed or excluded from the execution of the action or participation in the case. The exclusion is ultimately decided by the prosecutor directly superior to the prosecutor who gave the order (Article 7 LPPO).
A superior prosecutor is also entitled to change or repeal a subordinate prosecutor's decision. Any amendment or revocation of a decision is made in writing and attached to the case file. The change or repeal of a decision delivered to the parties, their attorneys or defenders and other authorised entities may only be made in accordance with the procedure and principles set out in the Act (Article 8 LPPO).
A superior prosecutor may also take over cases conducted by subordinate prosecutors and perform their activities, unless the provisions of the Act provide otherwise (Article 9 LPPO).
During their tenure of office, the prosecutor may not belong to a political party or take part in any political activity (Article 97 LPPO).

9. Independence of the Bar (chamber/association of lawyers)

Professional self-government is one of the forms of decentralisation of public administration,

and, at the same time, a form of citizen participation in its exercise. Article 17(1) of the Constitution of the Republic of Poland confers on the legislator the competence to create professional self-governments representing professions of public trust and taking care of the proper performance of these professions within the limits of public interest and for its protection.
The Constitutional Tribunal's jurisprudence indicates that the professional self-government thus created does not have its own powers, independent of the State, which could be opposed to the State, but is created as a result of the legislator's decision on the shape of the system of public authority.
When establishing the professional self-government referred to in Article 17(1) of the Constitution of the Republic of Poland, the legislator entrusts a certain professional group with the implementation of specific public tasks and equips it to this end with the appropriate authority. Thus, self-government empowers a certain professional group and enables it to decide on its own, within certain limits, about its affairs. As a result, it exercises public authority over the affairs of a given professional group.
By decision of the legislator, advocates and legal counsels are
in Poland organised on the basis of professional self-government (Article 2 of the Act – Law
on the Bar and Article 5(1) of the Act on Legal Counsels). The advocates' and legal counsels' self-governments perform the public tasks entrusted to them in an independent manner. This independence manifests itself primarily in assigning separate competencies to self-governments, separating them in organisational terms and providing sources of financing for their activities. At the same time, however, the state exercises supervision over these local authorities based on the criterion of legality. Pursuant to Article 3(2) of the Law on the Bar and Article 5(3) of the Act on Legal Counsels, the Minister of Justice supervises the activities of these self-governments to the extent and in the forms specified in the Act.
Professional self-governments of advocates and legal counsels establish the conditions for the exercise of the profession, represent the interests and protect the rights of the professional group concerned, establish and ensure the observance of rules of professional ethics, supervise the proper conduct of the profession through the exercise of disciplinary jurisdiction. The tasks delegated to the professional self-government also include the professional training of its members, including trainees, in order to continuously improve their qualifications and thus care for a high level of service provision in the public interest.

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

The Act of 20 December 2019 amending the Act – the Law on the Common Courts System, the Act on the Supreme Court and certain other acts (Journal of Laws, item 190), which entered into force on 14 February 2020.
In particular, the Act introduced:
1) modification of the shape of the judicial authorities and judicial self-government bodies, without any infringement of their representativeness,
2) the statutory definition of a judge (of each type of court) referring to the status of a judge regulated by the Polish Constitution,
3) clarification of disciplinary misconducts of judges by introducing into the Act, defined as an official misconduct: acts or omissions that may prevent or significantly hinder the functioning of the judicial authority, actions questioning the existence of a judge's official relationship, the effectiveness of the appointment of a judge or the legitimacy of the constitutional authority of the Republic of Poland, public activity that is incompatible with the principles of judicial autonomy and independence of judges,
4) a prohibition of the adoption by courts and judicial self-government bodies of resolutions of a nature detrimental to the functioning of the authorities of the Republic of Poland and its constitutional bodies,
5) the obligation for judges to make statements regarding their membership in various forms of associations (including political parties, before taking up the office of judge),
6) the institution of a financial penalty as one of disciplinary penalty that can be imposed by the court for a disciplinary misconduct of a judge (up to the amount of monthly remuneration),
7) entrusting the Disciplinary Chamber of the Supreme Court with cases concerning consent to the detention or criminal prosecution of a judge, as well as cases of disciplinary responsibility for actions

questioning the existence of another judge's official relationship, the effectiveness of their appointment or the legitimacy of the constitutional body of the Republic of Poland.
It should be noted that the Act differs from the original version of the bill due to numerous amendments. The amendments to the bill adopted by the Sejm have eliminated a number of proposals that were questioned as incompatible with European Union law and restricting the judicial discretion of judges. In particular:
1) the disciplinary responsibility of the judge for an obvious and flagrant breach of law was abandoned, including the refusal to apply a provision of the law if its inconsistency with the Constitution or an international agreement ratified with the prior consent expressed in the law has not been established by the Constitutional Tribunal in favour of responsibility for an obvious and flagrant breach of law,
2) the disciplinary responsibility of a judge for political activities was abandoned in favour of responsibility for public activities that are incompatible with the principles of judicial autonomy and the independence of judges,
3) the norm stating that political matters may not be the subject of the deliberations of the board and judicial self-government, in particular prohibition of the adoption of resolutions expressing hostility towards other authorities of the Republic of Poland and its constitutional bodies, as well as criticism of the basic principles of the political system of the Republic of Poland has been replaced by the norm stating that political matters may not be the subject of the deliberations of the board and judicial self-government, in particular it is prohibited to adopt resolutions undermining the principles of the functioning of the authorities of the Republic of Poland and its constitutional bodies.
Over the past year, there have been no other significant developments in the judicial system that could meet the criterion of significant and influencing public perception of the independence of the judiciary in general.

11. Other - please specify

B. Quality of justice

12. Accessibility of courts (e.g. court fees, legal aid)

There are more than 1,500 free legal aid and legal advice offices in Poland. This is a result of the Act on Free Legal Aid, Free Civil Counselling and Legal Education drafted by the Ministry of Justice. From the beginning of 2019, free legal aid and free civil advice is available to any person who cannot afford to receive paid advice and who makes a declaration to that effect. Advice is generally provided during an in-person visit. Persons who are unable to come to the office because of a mobility impairment or who experience communication difficulties can also obtain free advice by means of long-distance communications (telephone, Internet), by attending a meeting in their place of residence, or in a place equipped with a device facilitating communication with persons experiencing communication difficulties, or in a place where a sign language interpreter is provided. Since the beginning of 2016, a system of free legal aid, introduced by the Act on Free Legal Aid and Legal Education of 5 August 2015, has been operating throughout Poland.
The Ministry of Justice, together with the Chancellery of the President of the Republic of Poland and the Institute of Justice (a research unit affiliated with the Ministry of Justice), has undertaken work to amend the Act on Free Legal Aid and Legal Education. The developed draft amendment was referred back to the Sejm by the President of the Republic of Poland on 2 August 2017 (Sejm Paper No 1868). As a result, an act amending the Act on Free Legal Aid and Legal Education and certain other acts was passed on 15 June 2018, and was signed by the President of Poland on 30 July 2018.
The Act on Free Legal Aid, Free Civil Counselling and Legal Education of 5 August 2015 implemented new services (free civil counselling and free mediation), and the catalogue of beneficiaries was extended. This means that as of 1 January 2019, any natural person who submits a declaration that they are not able to cover the costs of paid legal aid is entitled to receive assistance.

The Act also provides for the implementation of tasks in the field of legal education in all districts. Thanks to the cooperation between the government, local government and NGOs, the system guarantees access to free legal advice and free civil counselling in local communities. There are also plans to gradually enable free mediation.
The Act provides for the implementation of legal education activities aimed at increasing legal awareness among the society.
Since 1 January 2019, these tasks have been carried out by non-governmental organisations under contracts for running a legal advice office. The subject matter and form of educational undertakings is meant to address problems reported in the course of providing legal advice in individual districts. The starost, where required by the local needs, will also be able to indicate a specific demand in an agreement with an organisation as to the form or subject matter of education conducted in the district in a given year. Educational tasks may be carried out in particular by developing brochures and guidebooks, delivering open lectures and workshops, and conducting social campaigns aimed at local communities in relation to local needs.
Additionally, other public administration bodies which carry out tasks in the field of legal education of the society within their competence are entitled to undertake educational activities, for example legal education aimed at young people, regardless of the activities undertaken by non-governmental organisations.
In Poland, court fees are considered to be an issue subject to statutory regulations. It is generally recognised that the determination of court fees is a form of exercising the constitutional right to a trial and, therefore, as a detailed presentation of a law which has constitutional status, must be regulated by statutory provisions. As Polish law now stands, this issue is regulated by the Act on Court Fees in Civil Law Cases of 28 July 2005.
Persons claiming their rights before a court who have not been granted exemption by default and who are in financial difficulties are entitled to request exemption from payment of court fees. To this end, applicants seeking exemption have to submit a request in writing or orally to the minutes of the court where the case is to be brought or is already pending. The request (including the oral version) has to include a statement that the applicant is not able to cover the court fees without damaging their own or their family's necessary subsistence. The statement must be made on a special form relating to the property, family, income and livelihood of the applicant. If the request for exemption from payment of court fees is rejected, the party cannot rely on the rationale used to justify the rejected application to claim exemption again. A renewed request for exemption from payment of court fees based on the same rationale will be rejected.
According to the new regulations, court fees are paid by cashless methods, to the checking account of the competent court, or by cash, directly at the court payment window, or using fee stamps of appropriate value.
Detailed information on court fees in individual cases (civil, criminal, administrative, family, etc.) can be found in the Bulletin of Public Information on the Internet.
See *https://bip.warszawa.so.gov.pl/artykul/223/70/tabele-oplat*
When examining the accessibility of courts, one should also pay attention to mediation procedures.
Mediation in Poland is a fairly developed legal institution and one of the most effective alternative methods for resolving disputes. This form of dispute resolution is an alternative to judicial interference. In Polish law, there is no legal definition of mediation. Based on opinions of the Polish jurisprudence, mediation is an attempt to bring a mutually satisfactory solution to the conflict, through the voluntary third party negotiation. Such negotiations are facilitated by an impartial and neutral mediator and help the parties reach an agreement. Mediation is governed, inter alia, by the Code of Civil and Criminal Procedure.
It is important that mediation is a voluntary way of resolving disputes and conflicts.
Disputes can be resolved through mediation in many areas. Under Polish law, mediation
can be used in respect of the following matters:
• civil,
• commercial,
• employment law,
• family law,
• minors,

• criminal,
• judicial-administrative,
• peer.
Various groups mediate, including: natural persons and business entities, spouses, family members, victims and offenders (also juvenile offenders), employees and employers, students, peers and teachers, social groups (e.g. neighbours). In view of the above mediation is available to almost everyone. Moreover, one of the biggest advantage of mediation (except time of proceedings) is its costs. The cost of mediation in relation to the cost of court proceedings is low and it depends on the type of mediation. Mediation is conducted in both court and private (without the participation of the court) cases. Thus, it may be conducted on the basis of a mediation agreement (out-of-court mediation) or a decision of the court for a referral to mediation (mediation referred by the court). In each case, the most important condition of mediation is the agreement of the parties.
In criminal matters and cases involving minors the parties do not pay the costs of mediation – these are covered from the Exchequer. In civil matters, the costs are borne by the parties. The parties usually pay half the costs each, unless they agree otherwise. In other types of cases, as a general rule remuneration is subject to agreement between the mediator and the parties. The mediator may, however, agree to conduct mediation on a *pro bono* basis. The availability of mediation is also enhanced by its various forms:
• direct (face-to-face meeting of parties in the presence of a mediator),
• indirect (used in a situation where the parties are not ready to talk to each other, so they meet individually with the mediator, who sends them solutions to each other. The parties can start direct mediation at the stage of their choice.),
• online/e-mediation (conducted via internet).
Accessibility - mediation referred by the court
The judge is required to assess whether the case can be resolved through mediation. The judge will be able to order the parties to attend an information meeting at which they will obtain information on mediation. (*Information meetings are also held in special rooms in the courts, so- called green rooms. Mediators are regularly on duty there and provide information on mediation.*) The Court may refer the parties to mediation at any stage of the proceedings. Mediation is carried out before the commencement of the proceedings, and with the agreement of the parties in the course of the case. During the trial each party may submit a request for mediation at any stage of the court proceedings. The settlement concluded before the mediator, after it is approved by the Court, has the legal force of the settlement before the Court. The settlement concluded before the mediator, which was approved by giving it the enforcement clause is enforceable.

13. Resources of the judiciary (human/financial)

Human resources of the judiciary as of 4 May 2020:
Judges: 9123
Judicial assistants: 3852
Associate judges: 486
Division officials: 2633
Probation officers: 5162
Members of the Consultative Council of Court Specialists (OZSS): 620
Clerks: 29490
Other employees: 2884

Expenditure on the judiciary in Poland is fully covered by the State budget. It should be indicated that this expenditure is increasing each year. There is an explicit provision in the Act on Common Courts (Article 176) under which 'the revenue and expenditure of common courts shall form a separate part of the State budget.' The literature underlines that such a strong emphasis on allocating a separate portion of the budget to common courts not only results from the budget policy but also ensures the independence of the courts as a systemic principle. It should be pointed out that expenditure on common

courts is gradually growing. It also represents the largest part of all expenditure on the judiciary. In 2017, a total amount of PLN 6,950,050.6 was allocated to them, and in 2018 the amount rose to PLN 7,527,737.0. The budget of common courts in 2019 amounted to PLN 8,145,810.0, while in 2020 the funding was increased by PLN 900 million. Additionally, the costs of maintaining the Constitutional Tribunal are a separate item in the budget. Expenditure on the Constitutional Tribunal is also growing steadily. The budget of the Constitutional Tribunal for 2018 covered the amount of PLN 33,723 million, and in 2019 – PLN 37,100 million. In 2020, the budget of the Constitutional Tribunal amounted to PLN 39,000 million.

14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)

The Division of Statistical Management Information in the Department of Strategy and European Funds is responsible for organizing, coordinating, supervising and preparing statistical reports including data about activities of common courts and military courts. As part of performing above tasks in the field of official statistics, the Division collects statistical data on the functioning of the justice system through various systems and tools. The main source of data are statistical reports completed by employees of courts on a quarterly, semiannual and annual basis in a cumulative manner in an IT system dedicated to the needs of statistical reporting. Statistical reports are divided according to areas of law and court instances.
It should be indicated that statistical data obtained by the Division of Statistical Management Information are strictly based on the Law of 29 June 1995 on Official Statistics and issued on the basis of its regulations. This means that statistical data at disposal of the Division is aggregated, data cannot be personal, cannot identify particular person. It is an obligation stated in article 10. of the Law of 29 June 1995 on Official Statistics (The identifiable microdata collected in statistical surveys shall be subject to absolute protection. Such data shall be used exclusively for the purpose of statistical calculations, compilations and analyses, and for the creation of sampling frames by the President of the Central Statistical Office of official statistics; the provision or use of such data for other purposes than specified above shall be prohibited (statistical confidentiality).

15. Other - please specify

Statistical reporting coordinated by the Minister of Justice is the basic source of information on the functioning of common courts. The reports present data on case traffic (influx – the number of cases received in a given statistical period, handling – the number of cases handled in a given statistical period, and the remainder – the number of cases not handled at the end of the statistical period), efficiency of proceedings (duration of proceedings until the final judgement, waiting time for the first session, waiting time for the justification to be drawn up), full-time employees (the number of judicial and auxiliary posts set by the Minister, and the number of posts that are actually filled), etc.
The primary statistical category is the register – a recording tool employing a letter designation found at the beginning of each case reference number. Resisters correspond to basic case types. Judicial reporting is focused on the case – its receipt and resolution (followed by final marking off). The data comes mainly from statistical reports prepared by court employees in an IT system dedicated to the needs of statistical reporting. The statistical reports are broken down according to branches of law and court hierarchy levels.
Work on statistical reporting involves a number of actions aimed at improving the quality of the statistics collected. The actions include the introduction of detailed rules for aggregation and validation in the IT system dedicated to the needs of statistical reporting. These rules enable detailed verification in particular sections of statistical forms, which helps eliminate errors as early as at the stage of entering microdata into the system by end users. One valuable source of professional knowledge in the process of statistical reporting is the Team of National Consultants – Validators consisting of court office

management inspectors and heads of administrative branches employed in district courts and courts of appeal. The ten-person Validation Team is a valuable link in the development of the statistical system, and the vast knowledge of its members guarantees that statistical reporting is carried out correctly. In addition, obtaining reliable information for statistical reporting is possible owing to the ongoing verification by the employees of the Department of Administrative Supervision, and clarification of any doubts with the employees of the courts by phone or e-mail.
The second source of reference used by the Department of Administrative Supervision is data from statistical tables obtained in annual cycles from the electronic database of the ICT system of the National Criminal Register, which provide data on adults sentenced by final judgement for offences sanctioned under the Criminal Code and special acts.
The statistics on the functioning of the judiciary obtained by the relevant Department of the Ministry of Justice are strictly based on the Act on Public Statistics of 29 June 1995 and regulations issued under it. This imposes the obligation to subject the collected statistical data to the rules set out in that legal act, which means that the statistical data available to the local Department are aggregated, cannot be microdata, and cannot identify a specific person. Pursuant to Articles 10 and 38 of the Public Statistics Act, microdata are subject to statistical confidentiality and cannot be disclosed because they are subject to special protection, being confidential and personal.
As far as case management is concerned, it should be emphasised that since 1 January 2018, the Random Case Allocation System (Polish: System Losowego Przydziału Spraw, SLPS) has been functioning in common courts throughout the country in accordance with the principles set out in the Regulation of the Minister of Justice of 18 June 2019 – Rules on the Operation of Common Courts (Journal of Laws of 2019, item 1141).
The Random Case Allocation System (SLPS) is an IT tool developed by the Ministry of Justice that allows for random selection of adjudicating panels (one-person, three-person and jury panels) for court cases conducted by courts at all levels of the court hierarchy. From the technical and organisational point of view, the use of the SLPS is possible in all divisions of all courts in Poland. The assignment of judges takes place during scheduled sessions (i.e. every day from 8 PM) and is conducted on the central server, using a random number generator. Immediately before the start of an assignment procedure, data from the Integrated Accounting and Human Resources System (Polish: Zintegrowany System Rachunkowości i Kadr, ZSRK) are synchronised with respect to the staffing of the division and the absence of individual judges and division officials. The results of the procedure are made available in a report listing the judges and lay judges assigned to each case. The full report specifies which judges have been appointed by the software to a given case and why (the full report gives F-function values for all judges of a division). The printout also indicates the number generated by the random number generator and the mathematical operations leading from that number to the number held by the judge assigned to the case.
There are plans to introduce a browser enabling court employees logged in to the court network to view the operation of the system in each court, i.e. to check the data entered into the system and the results of the assignment procedure. PDF files or printouts thereof documenting how the system works are made available to applicants as public information.
Currently, there are no tools or evaluation standards for the monitoring and research of the SLPS at the legislative level or the Minister's recommendation. The system is monitored and analyses are carried out as part of system maintenance. The principles and organisational structure of system maintenance are described in the Ordinance of the Minister of Justice of 28 December 2018 on conferring the performance of activities related to the design, implementation and maintenance of IT systems upon courts of appeal (Official Journal of the Ministry of Justice of 2018, item 352). The Ordinance specifies the IT – ITIL (Information Technology Infrastructure Library) standard.
System monitoring and analyses of system functioning are carried out as part of the primary and two secondary (technical and content-related) SLPS support lines. Anomalies occurring in the system, which may be caused by users' actions or possibly errors in the system itself, are investigated. Moreover, all SLPS functionalities are analysed on a continuous basis, based on SLPS end-user requests. Currently, support in the secondary content-related line is provided by employees of the Department of Human Resources and the Organisation of Common and Military Courts.
Additionally, a tool based on MS Excel has been made available to all SLPS users, to allow the monitoring of the correctness of assignment within individual court divisions at the level of case

categories (the most detailed level). The data in the tool are updated periodically (at the beginning of each week) to enable continuous monitoring of the proper functioning of the system. A reporting module which will allow every user to view analytical reports from the SLPS system is currently being developed.
As regards monitoring the assessment of court users and other lawyers, it should be stressed that the Ministry of Justice attaches great importance to the quality of customer service. In February 2014, the Minister of Justice signed a programming document titled 'A Strategy for the Modernisation of Justice in Poland 2014–2020.' This strategy was developed by a team consisting of representatives of the wider field of justice: the Ministry of Justice, the General Prosecutor, the Prison Guard and the National School of Judiciary and Public Prosecution.
The authors assumed that customer service is crucial for the entire justice system. The strategy involves building trust through, among other things, serving citizens efficiently. Standards of behaviour have also been implemented for employees of the Customer Service Office. These include guidelines on the image of the employees and the court, showing interest in the customer, recognising customers' needs, the proper attitude of a clerk, the procedure in case of objections reported by a customer, the confidentiality of service, the level of knowledge of the clerks, as well as guidelines for telephone and e-mail contact.
In 2014, based on the experience of the courts, a uniform questionnaire was created by the Ministry of Justice to examine the satisfaction of customers served by the Customer Service Office. The questionnaire is divided into two parts: the first one is identical for courts across the country, while in the second one courts can ask individual questions depending on their specific needs (e.g. in buildings where there are architectural limitation one can ask about the level of accessibility for disabled people). After consultation with all courts in the country, the Minister of Justice approved the model questionnaire, which was introduced in the Action Plan as binding in 2015. The customer satisfaction surveys are available both in written form in the court buildings as well as in electronic form – directly after opening the website of a given court.
The Ministry of Justice is able to continue the above activities thanks to funds obtained from EU programmes. The Operational Programme Knowledge Education Development should definitely be mentioned here, as it contains similar instructions for focusing attention on serving citizens in courts. Since the beginning of 2016, a project setting out detailed Customer Service Standards for common courts is being implemented under the Programme.

C. Efficiency of the justice system

16. Length of proceedings

The Ministry of Justice is implementing a reform of the justice system producing tangible positive effects. Although many important changes, such as reforms of criminal and civil proceedings, have only just begun to take effect in practice, the negative trend of increasingly prolonged court proceedings which lasted over the last 10 years has been halted.
Additionally, there has been a clear improvement regarding criminal cases. The duration of proceedings pending before district courts has now decreased by almost three months compared to 2015. In district courts, the average duration of criminal proceedings fell from 5.9 months in 2015 to 4.8 months in 2018.
The trend of increasingly prolonged civil cases, which was clearly visible in the times of the PO-PSL government, has been slowed down. Between 2012 and 2015, the average duration of civil cases in district courts increased by over 30 days. However, between 2015 and 2018, it increased by only a few days.
Improvements can be seen in crucial areas of civil justice in matters which are particularly important for Poles, for example observing workers' rights.
In the first half of 2019, the average time of examining cases submitted by labour inspectors for determination of employment relationship was shorter by as many as 6 months (i.e. by 176.6 days) in comparison with the period before the reform, i.e. the first half of 2016.
Insurance and labour law proceedings are concluded by district courts within six months on average, i.e. 3 months quicker than in 2016.

At the same time, in the first half of 2019, district courts dealt with 1.5 times more labour law cases than in the first half of 2016 – the number increased from 39,500 to 54,400. The Ministry of Justice pays special attention to this category of cases, which is particularly important to Poles affected by dishonesty of employers, and has, therefore, abolished court fees for employees who assert their rights in labour courts.
The implementation of random allocation of cases to judges, the reinstatement of the institution of associate judge (or 'test judge' in other words) and the adoption of major reforms of the Civil and Criminal Procedure Codes a few weeks ago, together with the completion of the systemic reform of courts, will significantly speed up proceedings.
One of the indicators calculated by the Division of Statistical Management Information is average duration of court proceedings of selected categories of cases. This indicator is calculated by the weighted average method, which means it is the quotient of the sum of the products of the means of time intervals and the number of cases from these intervals to the total number of all cases examined. The unit of measure for the duration of judicial proceedings is the month. Statistical data on the duration of court proceedings in 2019 is currently under review and at the present time it is not yet available, however, information in this respect regarding 2018 is available and is as follows: the indicator average duration of court proceedings of selected categories of cases for 2018 (including the duration of mediation) is 5,4 months in first instance courts. I remain with hope that the above characteristics of the method of obtaining statistical data on the activities of the common judiciary will be useful".

17. Enforcement of judgements

Statistics on the enforcement of judgements are provided through the Bulletin of Public Information. Each court posts the information on its website. See for example
https://bip.warszawa.so.gov.pl/artykuly/1479/dane-statystyczne

18. Other - please specify

II. Anti-corruption framework

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

19. Authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Resources allocated to these (the human, financial, legal, and practical resources as relevant).

The authorities with the power to prevent, detect and prosecute corruption offences include:
– the Public Prosecutor's Office – acting pursuant to the Act of 28 January 2016 – Law on Public Prosecutor's Office (Journal of Laws of 2019, item 740, as amended),
– the Police – acting pursuant to the Act on the Police of 6 April 1990 (Journal of Laws of 2020, item 360, as amended),
– the Military Gendarmerie – acting pursuant the Act on the Military Gendarmerie and Military Law Enforcement Agencies of 24 August 2001 (Journal of Laws of 2020, item 431), and
– the Central Anti-Corruption Bureau (Polish: Centralne Biuro Antykorupcyjne, CBA) established by the Act on the Central Anti-Corruption Bureau of 9 June 2006 (Journal of Laws of 2019, item 1921, as amended) as an intelligence agency for combating corruption in public and economic life, in particular in state and local government institutions and for combating activities detrimental to the State's economic interests.

– moreover, independent anti-corruption positions have been established in some ministries (e.g. the Ministry of National Defence, the Ministry of the Interior and Administration, the Ministry of Justice, the Ministry of Agriculture).
In accordance with the provisions of the Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2020, item 30, as amended), these authorities are primarily obliged to correctly apply measures provided for in criminal law and disclose the circumstances conducive to committing offences (including corruption-related offences) so that the objectives of criminal proceedings are achieved not only in combating crimes, but also in preventing them and in strengthening respect for the law and the principles of social harmony.
It should also be noted that on 11 January 2007 the Commander-in-Chief of the Military Gendarmerie and the Head of the Central Anti-Corruption Bureau signed the Agreement on Cooperation between the Military Police and the Central Anti-Corruption Bureau (Official Journal of the CBA of 2007 No 2, item 7), which is aimed at ensuring efficient and effective cooperation of these bodies within the scope of the performed tasks. The parties to this Agreement organise and conduct joint undertakings within their respective areas of activity to identify and combat instances of corruption, and in particular operational, reconnaissance, investigative, and supervisory activities, as well as actions related to information exchange and communication.
Statistical data on corruption offences collected by the Police Headquarters, on the other hand, are available under the following links:
http://statystyka.policja.pl/st/przestepstwa-ogolem/przestepstwa-gospodarcz/przestepstwa-korupcyjne/122279,Przestepstwa-korupcyjne.html
http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-10/63537,Lapownictwo-bierne-art-228.html
http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-10/63541,Platna-protekcja-art-230-i-230a.html

A. Prevention

20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)

On 1 January, the Act of 6 September 2001 on access to public information came into force (Journal of Laws No 112, item 1198). The Act elaborates on Article 61 of the Polish Constitution on the right of citizens to be informed about the activities of public authorities. The Act orders state authorities (and other entities) to make available any information on public matters, i.e. public information (Article 1(1)). Classified information is excluded from this rule (Article 5(1)). Under the Act, the right to public information includes the right to obtain such information containing up-to-date knowledge of public matters without delay. The right to public information consists of the following rights:

- the right to obtain public information, including processed information,
- the right to view official documents,
- access meetings of elected collegial bodies of public authorities elected in general elections.

This right can be exercised by all citizens (Article 2(1)). Persons requesting public information must not be asked to state reasons for their request (Article 2(2)).
Under the Act, public information is made available by:

- publication in the online Bulletin of Public Information,
- disclosure at the request of a person concerned,
- distribution in a publically available place or via information terminals,

According to the Act (Article 10(1)), public information which has not been made available in the Bulletin of Public Information is to be made available at the request of the interested party. Disclosure of information at the request is handled "without unnecessary delay", no later than 14 days from the date of submitting the request (Article 13(2)). If that is impossible, the applicant has to be informed within that period about the cause of the delay in delivering the information and a new deadline but no greater than 2 months. If the information can be delivered immediately in oral or written form, the applicant

does not submit a written application. The institution disclosing the information has a duty to allow it to be copied, printed, sent or transferred onto a commonly used information storage medium.
Information may be refused only on the grounds of its confidentiality (personal data protection, right to privacy, or State, official, fiscal, statistical or other secret). Refusal is conducted in form of an administrative decision. Appeal against the decision is recognized within 14 days (Article 16(2)(1)).
The Act on Lobbying Activity in the Lawmaking Process is currently in force in Poland (see text of the Act: *http://www.sejm.gov.pl/prawo/lobbing/kon12.htm*).
The Act on Lobbying Activity does not specify the terms 'lobbying' and 'lobbyist'. Article 2(1) and (2) contain definitions of 'lobbying activity' and 'professional lobbying activity'. Pursuant to Article 2(1) of the Act on Lobbying Activity: *lobbying activity is any activity carried out using legally permitted methods aimed at exerting impact on public authorities in the lawmaking process*. Section 2 of that Article states that: *professional lobbying activity is a remunerated lobbying activity carried out on behalf of third parties*
in order to take into account the interests of other persons in the lawmaking process. Distinguishing professional lobbying activity within a broader concept of lobbying activity creates a duality of the notion of lobbying, especially as only professional lobbying activity is subject to detailed regulation in the further provisions of the Act. As a result, it follows from the Act that there may be non-professional lobbyists whose activities are not regulated by the Act, for example with regard to the obligation to be entered in an open register of lobbyists. The category of a professional lobbyist, who, according to Article 2(3) of the Act on Lobbying Activity, can only be an entrepreneur or a natural person who is not an entrepreneur under a civil law contract, has also been narrowed down excessively. Meanwhile, as researchers note: *lobbying is exclusively a professional activity carried out in the interest of third parties and for remuneration or reimbursement of costs incurred, regardless of the form of legal relationship between the lobbyist and the principal.* The Act does not propose an exhaustive catalogue of behaviours which may be considered as lobbying activities, nor does it mention the subjective and objective exclusions of the types of activities which should not be covered by lobbying regulations. Therefore, from the very entry into force of the Act on Lobbying Activity, doubts arose as to the extensive subjective scope of lobbying activity, as it included even those establishments which had denounced lobbying, for example watchdog or charity organisations. At the same time, the provisions of the Act on Lobbying Activity restrict the concept of lobbying activity solely to the process of lawmaking, recognising that lobbying refers primarily to the lawmaking activity of State bodies, and exclude from their scope lobbying undertaken towards bodies applying the provisions of law and issuing administrative acts on this basis. Moreover, the Act does not clearly indicate to whom lobbying is addressed, as it may involve legislative and executive bodies, local authorities, and often even judicial authorities.
The Act provides for keeping a register of entities performing professional lobbying activities and includes rules of performing professional lobbying activities to enable disclosing any lobbying activity. One of the principles is formulated in Article 14, granting professional lobbyists the right to carry out professional activity in the seat of an office serving a public authority (although the wording of this provision raises doubts as to whether the target of the lobbyists' activity is the decision-maker who heads a public authority, or officials employed in the office, or both). By being entered in the register, professional lobbyists gain the right to carry out their activities in offices serving public authorities in order to appropriately represent the interests of the entities for which they are lobbying. The Act does not describe the essence of this 'appropriate' representation
of interests. Pursuant to Article 14(2) of the Act on Lobbying Activity, the head of an office is obliged to provide professional lobbyists entered in the register with access only to the office of which they are in charge. Moreover, pursuant to Article 16(2) of the Act, heads of offices serving public authorities are obliged to determine a detailed procedure for employees of the subordinate office for dealing with entities performing professional lobbying activities and with entities performing professional lobbying activities without entry in the register, including the manner of documenting contacts undertaken.
However, the application of the Act on Lobbying Activity has gone the wrong way. Rather than being the basis for developing professional and legal representation of interests, it has actually led to a decline in the number of professional lobbyists active in the Parliament and in government institutions. This can be confirmed by the low level of activity of professional lobbyists shown in annual reports published by ministries and other public offices, despite the fact that the reports are burdened with minimalist, official

formalism. According to the reports, the number of active professional lobbyists in the Sejm decreased from 27 in 2015 (lobbyists were present or active at 39 meetings of Sejm committees) to 18 in 2018 (present at only 10 committee meetings).
Different objective and subjective reasons can be identified for such low activity by professional lobbyists. The objective factors include the lack of resources of national entities preventing the use of services offered by professional lobbyists. They are mainly utilised by foreign companies and international corporations. National entities use their own resources, i.e. staff or members and informal contacts with political decision-makers. Moreover, due to the 'bad reputation' of lobbying and lobbyists and the need to report such contacts, decision-makers avoid official meetings with professional lobbyists. The latter have started to conduct their business under different labels: so-called experts, political advisers, lawyers, and public affairs specialists. The activity of the 476 entities entered in the register of the Ministry of Interior and Administration until 26 November 2019, as shown by reports published in the Bulletin of Public Information, is surprisingly small. This illustrates the superficial nature of the provisions, originally intended to ensure control over lobbying activities, as well as the minimalist approach to these provisions exhibited by the officials obliged to exercise control.
The Act on Lobbying Activity also regulates the procedure of public hearing in relation to work on draft regulations. A public hearing procedure has also been provided for in the case of draft acts submitted to the Sejm. A public hearing may be held at different stages of the legislative procedure. Detailed rules of the Sejm's public hearings are specified in the Standing Orders of the Sejm. The public hearing has the potential to enable group interests to be articulated more effectively in respect of laws and regulations through institutionalised participation in the legislative process. However, the disadvantage of this institution in Poland is that social entities do not have the right to hold a hearing and holding a public hearing is never a prerequisite – not even in strictly defined cases. The development of this instrument is also hindered by the ample opportunities to cancel a public hearing. As a result, public hearings are organised occasionally, when a very small number of laws is being passed. Incidentally, opinions presented by the participants in a hearing may provide useful information and alternative solutions to the issues to be regulated.
The right of petition is also an important instrument in Poland.
Currently, the right of petition is one of the political rights guaranteed by the Constitution of the Republic of Poland (Article 63). The literature on the Constitution draws a line between petitions in a strict sense, i.e. one of the types of citizens' motions provided for in the Fundamental Law (in addition to requests and complaints), and petitions in a general sense, i.e. petitions in the strict sense, and requests and complaints. The constitutional regulation of the right of petition raises considerable controversy in the doctrine, especially in terms of distinguishing petitions from requests. Interestingly, for many years the institution of petition enjoyed only a modest statutory provision in the Code of Administrative Procedure. The Act on Petitions (Journal of Laws of 2014, item 1195) was passed on the initiative of the Senate on 11 July 2014, introducing detailed regulations concerning the concept of a petition as well as the procedure for its processing. The Act provides that a petition may be submitted in the interest of the public, the petitioner, or a third party with their consent by a natural person, a legal person, an organisational unit which is not a legal person, or a group of such entities to a public authority, as well as to a social organisation or institution in connection with the performance of their duties within the field of public administration (Article 2(1) and (2)). The subject of a petition may be a request, but its contents have been regulated in an open manner. The Act on Petitions provides that petitions may concern, in particular, a change in the provisions of law, the taking of a decision or other action in a case concerning the petitioner, social life or values requiring special protection in the name of the common good which fall within the tasks and competences of the petitioner (Article 2(3)).
The Sejm of the Second Republic of Poland established a Parliamentary Petitions Committee. In the modern times, such a body (the Committee on Human Rights, Rule of Law and Petitions) was first set up in the Senate as a result of the amendment of the Standing Orders of the Senate of 20 November 2008 (Monitor Polski No 90, item 781), in which – despite the then brevity of the statutory provisions regarding the right of petition – extensive regulations were introduced concerning the processing of petitions addressed to this Chamber. The creation of the Sejm Petitions Committee, as well as the introduction of the relevant procedural rules, took place only in September 2015, as a result of the entry into force of the amendment to the Standing Orders of the Sejm of 12 June 2015 (Monitor Polski item 550), adopted in connection with the entry into force of the Act on Petitions.

Examination of parliamentary practice suggests that the use of new legal tools of exercising the right of petition by citizens in both chambers shows a trend of development, with petitions being submitted much more often to the Sejm rather than to the Senate. For example, according to the report of the Senate Committee on Human Rights, Rule of Law and Petitions, four petitions were received by the Senate from 6 September 2015 (the date of entry into force of the Petitions Act) until 31 December 2015, while the report of the Parliamentary Petitions Committee for the same period confirmed the receipt of 40 petitions addressed to the Sejm. In principle, all petitions contained demands for certain statutory changes, sometimes accompanied by documents that were actually draft acts.

21. Rules on preventing conflict of interests in the public sector

The rules on preventing conflict of interests in the public sector are currently regulated by several basic acts, i.e:
– the Act on Restriction of Business Activity by Persons Performing Public Duties of 21 August 1997;
– the Act on Access to Public Information of 6 September 2001;
– the Act on Act on Lobbying Activity in the Lawmaking Process of 7 July 2005;
– the Act on Restriction of Business Activity by Persons Performing Public Duties of 21 August 1997.
The Act on the Central Anti-Corruption Bureau of 6 June 2006, which is the basic entity operating in the field of preventing and combating corruption, is also of key importance in this context.
Informational resources and guidebooks identifying appropriate conflict of interest practices are widely available. Such resources are supplied both by government administration bodies on dedicated websites, as well as by a number of non-governmental organisations.
See for example:

https://antykorupcja.gov.pl/ak/konflikt
https://www.uzp.gov.pl/baza-wiedzy/interpretacja-przepisow/pytania-i-odpowiedzi-dotyczace-nowelizacji-ustawy-prawo-zamowien-publicznych-2/nowe-podejscie-do-badania-konfliktu-interesow

There are many bodies that deal with preventing and combating corruption. These include specialised bodies but also other government agencies and supervisory bodies.
The specialised body is the CBA. The Central Anti-Corruption Bureau (CBA) is an intelligence agency established to combat corruption in public and economic life, particularly in State and local government institutions, as well as to combat activities detrimental to the State's economic interests. The Head of the Central Anti-Corruption Bureau is a central body of government administration, and is supervised by the Prime Minister. The Head of the CBA is appointed for a 4-year term and dismissed by the Prime Minister, after consultation with the President of the Republic of Poland, the Special Services Board and the Special Services Committee. The Head of the CBA may only be re-appointed once. The tasks of the CBA within the scope of the Bureau's competence (combating corruption in public and economic life, in particular in State and self-government institutions, as well as combating activities detrimental to the State's economic interests) include first of all recognition, prevention and detection of offences (mentioned in Article 2(1)(1) of the Act on the CBA) and prosecution of perpetrators, but also:

- disclosing and preventing cases of non-observance of the provisions of the restriction of business activity by persons performing public duties;
- documenting the grounds and initiating the implementation of regulations on the return of benefits obtained unfairly at the expense of the Treasury or other State legal persons;
- disclosing cases of non-observance of the procedures for making and implementing decisions, as defined by law, concerning: privatisation and commercialisation, financial support, awarding public contracts, management of property of public finance sector entities, entities receiving public funds, entrepreneurs with the participation of the State Treasury or local government entities, granting concessions, permits, subjective and objective exemptions, credits, preferences, quotas, ceilings, sureties and bank guarantees;
- verifying the correctness and truthfulness of property declarations or declarations of business activity of persons performing public duties.

Prevention is also an important part of CBA's activity.

Activities performed by CBA officers, within the scope of tasks set forth in the Act, include:

- analytical and informational activities;
- operational and reconnaissance activities;
- supervisory activities;
- investigation activities.

Operational and procedural activities

Operational and reconnaissance activities are carried out by CBA officers in order to prevent, recognise and detect offences, as well as to obtain and process information essential for combating corruption in State institutions and local government, and activities detrimental to the State's economic interests.

If there is a justified suspicion of an offence, CBA officers perform investigative or evidence-gathering procedures set forth in the provisions of the Code of Criminal Procedure, including procedures on the instructions of a court or a prosecutor.

Supervisory activities

The Bureau is the only intelligence agency authorised to verify property declarations and business decisions.

The purpose of supervisory activities carried out by CBA officers is to disclose cases of corruption in public institutions, abuse of persons performing public duties and activities detrimental to the State's economic interests.

Inspections are carried out in line with an annual plan approved by the Head of the CBA or, if necessary, on an ad hoc basis.

The supervisory activities consist in:

1. disclosing and counteracting non-compliance with the law, for example in the area of issuing economic decisions (e.g.: privatisation processes, financial support, management of State and municipal property, public procurement),
2. verifying the correctness and truthfulness of property declarations or declarations of business activity of persons performing public duties.

Analytical activities

Identification of threats detrimental to the State's economic interest and informing State authorities about them early and, as far as possible, in advance, as well as formulating proposals for remedial actions are the basic objectives of analytical and informational undertakings conducted by CBA officers. Furthermore, these efforts help support operational, reconnaissance, investigation and supervisory activities.

Preventive activities

Within its scope of operation, the CBA also conducts activities of a preventive and educational nature. In this respect, it cooperates with other institutions and non-governmental organisations dealing with corruption.

Other entities which are also involved in preventing and combating corruption in their operation include the following: 1) Internal Security Agency; 2) National Revenue Administration; 3) Ministry of National Defence; 4) Supreme Audit Office; 5) Police; 7) Public Prosecutor's Office; 8) Border Guard.

22. Measures in place to ensure whistle-blower protection and encourage reporting of corruption

As regards the issue of penalising potential negative behaviour of an employer towards a whistleblower, there is only one provision – Article 218 of the Criminal Code. The current version of this provision penalises two behaviours:

• malicious or persistent violation of an employee's right under an employment relationship or social security (by persons performing activities in these areas); this is punishable by a fine, restriction of liberty or imprisonment for up to two years;

• refusal to reinstate the employee where the reinstatement was ordered by the competent authority; this is punishable by a fine, restriction of liberty or imprisonment for up to one year.

First of all, it should be pointed out that the concept of an employee is to be understood broadly; it refers to an employment relationship in the general sense, and thus includes, in particular, cases where a person with no working capacity provides work. This also applies to persons who, being actually employees, formally carry out work under a contract of mandate or other civil contract. This is due to the fact that Article 22(11) of the Labour Code provides that employment under the conditions specified in Article 22(1) of the Labour Code is based on an employment relationship, regardless of the name of the contract concluded by the parties. Therefore, rights resulting from a contract for home-based work or work performed on the basis of an appointment or administrative referral are also protected under Article 218 of the Criminal Code. This position was also adopted by the Supreme Court in its resolution of 15 December 2005, I KZP 34/05, which stated that '*the rights of a person having an employment relationship within the meaning of Article 22(1) of the Labour Code, i.e. such a relationship which – taking into account its actual characteristics – is or should be established by performing one of the legal acts specified in Article 2 of the Labour Code.*'

With regard to the first offence, it should be pointed out that the concept of obligations arising from an employment relationship should be understood broadly. The source of these rights is irrelevant; they may derive from a contract as well as from an act, an international law of equal or superior rank, another legislative act of general application, a regulation or a collective agreement. The only condition is that these legislative sources shape the content of a specific employment relationship, and in particular that the specific rights of the employee in relation to the performance of their job are derived therefrom. Similarly, the concept of social security rights should be understood broadly. The notion of malice should be understood as the purposefulness of an action, the desire to harass an employee. According to the Supreme Court, malice can be classified as unreasonable willingness to harm an employee, vicious behaviour, harassment, humiliation, or causing damage to an employee. The Court of Appeal in Wrocław indicated, for example, that '*malicious behaviour is characterised by a desire to harass, to show disregard by not respecting, despite an objective opportunity, a specific employee's right.*' Persistence means that the behaviour of the perpetrator must either last for a certain period of time, or must be repeated several times, and must also include the awareness that it nullifies the possibility of achieving the state provided for by the law.

Mobbing is obviously an offence as well. In its judgement of 17 January 2017 WA 18/16154, the Supreme Court expressed the legal view that '*the offence under Article 218(1a) of the Criminal Code, i.e. mobbing, consists in malicious or persistent infringement of employee rights resulting from an employment relationship or social insurance by a person performing activities covered by labour law and social insurance. Persistence must involve two factors: bad will of the perpetrator and duration of their behaviour. This persistence is manifested by intrusive, sequential or repetitive behaviour (similarly to the offence specified in Article 209 of the Criminal Code). Malice, in turn, can be classified as unreasonable willingness to harm an employee, vicious behaviour, harassment, humiliation, and causing damage to an employee.'*

The offence of refusal to reinstate an employee where the reinstatement was ordered by a competent authority consists in a situation where the employer has failed to provide employment despite a final judgement ordering reinstatement and at the same time the employee has reported to the workplace demonstrating availability for work within the statutory seven days. The manner of refusal indicated in this provision may vary in reality – from complete inactivity of the employer, through a verbal or written refusal to reinstate, to a physical restriction (e.g. taking away the keys, blocking electronic access codes).

To sum up, it should be pointed out that Article 218 of the Criminal Code may be a tool to penalise employers' negative behaviour towards whistleblowers, but not in every case. This will only be possible if the employer's retaliatory action against the whistleblower takes the form of persistent and malicious violation of employee rights, which will not always be the case. The above is especially true when the employer's actions seem neutral or have a formal legal basis, but the application of this basis is questionable (e.g. cutting an optional bonus). Moreover, proving evidence of malice or persistence is likely to be problematic in the course of the investigation.

When analysing the usefulness of the above mentioned provision in the context of the protection of whistleblowers, it should also be borne in mind that the provision only pertains to employees (even if the term is understood broadly within the meaning of labour law), and does not cover other entities (e.g. officers of uniformed services, persons employed under a contract of mandate or a specific task contract). This is a clear defect of this provision and changes should definitely be proposed.

Pursuant to the provisions of Article 304(1) of the Code of Criminal Procedure, any person, having learnt about an offence prosecuted ex officio, is under a social obligation to notify a prosecutor or the Police. The provisions of Articles 148a and 156a of the Code of Criminal Procedure apply accordingly. The provisions concern the protection of personal data of persons reporting a crime or giving evidence, including by placing the address data in a separate (not accessible to the parties) address attachment.
The above provision has two characteristic features: the fact that it is addressed to any person who learns about the commission of an offence, and the fact that such an obligation is openly called a 'social obligation'. Such a description of the nature of this obligation stems from the principle that no person can be held criminally liable for failure to report an offence despite being aware it, which makes the provision a *lex imperfecta*. This means that such behaviour can only be assessed in terms of ethics. An exception to the rule of no criminal liability for failing to report an offence is specified in Article 240 of the Criminal Code, listing offences which must be reported under the penalty of imprisonment of up to three years. This provision contains a catalogue of the most serious offences, the prosecution and judging of which is so important from the point of view of the legislator that it justifies the introduction of an exceptional solution in the form of a general obligation to inform law enforcement authorities about the occurrence of such offences, regardless of the stage of their occurrence. This is also due to the fact that this provision protects the criminal justice system. The obligation to immediately report to a criminal prosecution body applies in the case of the following offences: Article 118 (genocide), Article 118a (mass bombing), Article 120 (use of means of mass destruction), Article 121 (production or storage of means of mass destruction or trade in such means), Article 122 (use of forbidden methods or means of combat), Article 123 (attempt against the life or health of prisoners of war or civilians), Article 124 (criminal violations of international law), Article 127 (coup d'état), Article 128 (attempt against a constitutional body of the Republic of Poland), Article 130 (espionage), Article 134 (attempt against the life of the President of the Republic of Poland), Article 140 (attempt against a unit of the Polish Armed Forces), Article 148 (murder), Article 156 (serious damage to health), Article 163 (causing an event dangerous to the public), Article 166 (seizure of a ship or aircraft), Article 189 (imprisonment), Article 197(3), and (4) (aggravated types of rape), Article 198 (sexual abuse of helplessness or insanity), Article 200(1), (3), (4), and (5) (paedophilia, showing pornographic content to a minor under 15 years of age, showing the performance of a sexual activity to such a minor, advertising or promoting the dissemination of pornographic content), Article 252 (taking a hostage), any crime of a terrorist nature.
Pursuant to Article 115(20) of the Criminal Code, a terrorist offence is a prohibited act punishable by imprisonment, the upper limit of which is at least five years, committed with the aim of: serious intimidation of many people; forcing a public authority of the Republic of Poland or another state or a body of an international organisation to undertake or abandon specific actions; causing serious disturbances in the system or economy of the Republic of Poland, another state or an international organisation – as well as a threat of committing such an act. The aforementioned Article 240 of the Criminal Code also contains provisions excluding criminal liability of the perpetrator of this offence and mitigating it (by means of a provision on the offender not being liable to punishment). Pursuant to Article 240(2) of the Code of Criminal Procedure,
a person who failed to report an offence, having sufficient grounds to believe that the authority mentioned in Section 1 knows about the prepared, attempted or committed criminal act, is not committing the offence specified in Article 240(1) of the Criminal Code; neither does a person who prevented the commission of the prepared or attempted criminal act specified in Article 240(1) of the Criminal Code. The legislator also provided that a victim of an act listed in Article 240(1) of the Criminal Code who failed to report the offence (Article 304(2a) of the Code of Criminal Procedure) and a person who failed to report the offence for fear of criminal liability threatening that person or their closest relatives (Article 304(3) of the Code of Criminal Procedure) shall not be subject to penalty. It should be further pointed out that the legal obligation to report an offence, pursuant to Article 304(2) of the Code of Criminal Procedure, also lies with State and local government institutions, which have learned about the commission of an offence prosecuted ex officio in connection with their activity. They must immediately notify the prosecutor or the Police and take the necessary steps until the criminal prosecution authorities arrive or until such authorities issue an appropriate order to prevent the obliteration of traces and evidence of the offence.
To sum up, the legislator, through the provisions described above, generally encourages all entities (not only natural persons) to report suspected offences. The obligation, however, is imposed only as a moral

requirement, and becomes a legal obligation causing criminal liability only in exceptional circumstances (Article 240 of the Criminal Code).
It is therefore necessary to determine whether this intention is followed by appropriate legal mechanisms to provide such persons with adequate protection (legal, but also physical) in relation to the effects of reporting an offence. The answer is: yes. Such mechanisms can, in fact, be found in three legislative acts: the Act on the Protection of and Assistance for Victims and Witnesses of 28 November 2014; measures contained in the Code of Criminal Procedure; and measures contained in the Act on the Police of 6 April 1990. Provisions concerning the protection of crown witnesses and provisions concerning potential protection of co-defendants acting under Article 60 of the Criminal Code remain outside the scope of this study. This is due to the fact that such individuals do not fall within the definition of a whistleblower.

The issue of protection of whistleblowers in Polish law is examined by many organisations, especially NGOs. There have been many analyses on the mechanisms of protection of whistleblowers in Polish law. There is also a special website dedicated to this topic, cf. www.sygnalista.pl

See also:

Whistleblowers in the Polish legal system

iws.gov.pl › wp-content › uploads › 2019/03 › IWS-

Protection of whistleblowers - planned changes in Polish....
www2.deloitte.com › doradztwo-prawne › articles › oc...

23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).

In Poland, some areas are particularly at risk of corruption. All studies and opinion polls involving entrepreneurs and public opinion clearly indicate that these focal points are:
1) foreign companies (corruption in concluding trade agreements with foreign partners);
2) local governments;
3) health care;
4) justice.
In addition, experience shows that even when State bodies whose purpose is to investigate corruption (the Police, Public Prosecutor's Office) are working properly, courts often fail to admit that a criminal act has been committed. For example, the Prosecutor's Office recently charged Mrs. A.G., a hospital director, with accepting 13 financial gains. Nevertheless, in the court's view, the acceptance of the financial gain did not constitute corruption because '*It was an additional, informal charge that did not influence the defendant's decisions.'*
The budget outlays for combating corruption have been steadily increasing for several years now. The budget of the CBA – the key agency for combating corruption – amounts to PLN 213 million, i.e. PLN 9 million more than in 2019. The budget of the Internal Security Agency in 2020 is PLN 635 million and is larger by PLN 33 million than in the previous year.

24. Any other relevant measures to prevent corruption in public and private sector

The Act on Reduction of Administrative Barriers for Citizens and Entrepreneurs – an act of 25 March 2011 introducing, as part of the simplification of business law, solutions to reduce the bureaucracy, decrease the costs of running a business, reduce the number of permits, registers of regulated activity, licences and authorisations, and limit reporting. The Act was signed by the President of the Republic of Poland on 20 April 2011, and entered into force on 1 July 2011. The Act has introduced numerous changes in many legislation acts, including the Code of Administrative Procedure.
One of the basic assumptions of the Act is the introduction of an institution of statement to replace the obligation to submit certificates; in other words, the introduction of an economic principle that citizens, instead of proving a specific factual or legal situation with documents, will be able to submit a statement instead of certificates.
'A public administration body may not demand a certificate or statement to confirm facts or the legal situation if they are known to the body ex officio, from its records, registers or other data [...]' or other sources specified in the Act (Article 1 of the Act).
Such statements must state that the applicant is aware of criminal liability for making a false statement.
In the last World Justice Project Rule of Law Index 2019 report, Poland was ranked 21 in terms of combating corruption (gaining 0.73 points), and was ahead of such countries as Portugal, Spain, Slovenia, Czechia, Italy, Romania, Croatia, Greece, Hungary and Turkey. It is worth noting that in the same report Poland was ranked 19 in terms of security and order (scoring 0.86 points), outpacing such countries as the Netherlands, Great Britain, Croatia, Belgium, Portugal, Spain, Bulgaria, Italy and France.

25. Criminalisation of corruption and related offences

Pursuant to Article 2(3a) of the Act on the Central Anti-Corruption Bureau, corruption is 'an act:
1) consisting in promising, offering or giving, directly or indirectly, any undue gain to any person in a public office, for the benefit of that person or for the benefit of any other person, in return for any act or failure to act in the exercise of their function;
2) consisting in requesting or accepting, directly or indirectly, any undue gain by a person in a public office for the benefit of that person or for the benefit of any other person, or accepting an offer or promise of such gain, in return for an act or failure to act in the exercise of one's function;
3) committed in the course of business activity involving performance of obligations towards a public authority (institution), consisting in promising, proposing or giving, directly or indirectly, any undue gain to a person who manages an entity not belonging to the public finance sector or works in any capacity for such an entity, for the benefit of that person or for the benefit of any other person, in return for an act or failure to act which violates the obligations of that person and constitutes a socially harmful reciprocity;
4) committed in the course of business activity involving performance of obligations towards a public authority (institution), consisting in requesting or accepting, directly or indirectly, any undue gain or accepting any proposal or promise of such gain, by a person who manages an entity not belonging to the public finance sector or works in any capacity for such an entity, for the benefit of that person or for the benefit of any other person, in return for an act or failure to act which violates the obligations of that person and constitutes a socially harmful reciprocity;
Corruption offences are part of the broadly understood criminal business law, because they encompass taking specific actions in order to obtain benefits, usually financial ones. They concern both persons engaged in public life (public officers) and persons performing public or private sector functions, for example managers. Corruption can take various forms. The most common ones are so-called active bribery and paid protection.

Corruption offences include:

1) **venality of a public officer (Article 228(1)–(6) of the Act of 6 July 1997 – Criminal Code (Journal of Laws of 2019, item 1950, as amended)).**
Article 228. *§ 1. Any person who accepts a financial or personal gain or a promise thereof in connection with the performance of a public office*
shall be liable to a term of imprisonment of between 6 months and 8 years.
§ 2. In a case of a lesser gravity, the perpetrator
shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.
§ 3. Any person who accepts a financial or personal benefit or a promise thereof for an act constituting a breach of the law in connection with the performance of a public office
shall be liable to a term of imprisonment of between 1 year and 10 years.
§ 4. The penalty specified in Section 3 shall also apply to any person who makes the performance of an official duty dependent on the receipt of a financial or personal gain or a promise thereof or demands such a gain in connection with the performance of a public office.
§ 5. Any person who accepts a financial gain of considerable value or a promise thereof in connection with the performance of a public office
shall be liable to a term of imprisonment of between 2 and 12 years.
§ 6. The penalties set out in Sections 1-5 shall also apply, as appropriate, to any person who accepts a financial or personal benefit or a promise thereof or demands such a benefit, or makes the performance of an official act dependant upon the receipt thereof in connection with the performance of a public office in a foreign country or an international organisation.
2) **bribery (Article 229(1)–(5) of the Criminal Code)**
Article 229. *§ 1. Any person who grants or promises to grant a financial or personal gain to a person in a public office in connection with the performance of that function*
shall be liable to a term of imprisonment of between 6 months and 8 years.
§ 2. In a case of a lesser gravity, the perpetrator
shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.
§ 3. If the perpetrator of the act referred to in Section 1 aims to induce a person in a public office to violate the provisions of law or grants or promises to grant such a person a financial or personal gain for the violation of the law, they
shall be liable to a term of imprisonment of between 1 year and 10 years.
§ 4. Any person who grants or promises to grant a financial gain of significant value to a person in a public office in connection with the performance of that function
shall be liable to a term of imprisonment of between 2 and 12 years.
§ 5. The penalties set out in Sections 1–4 shall also apply mutatis mutandis to a person who grants or promises to grant a financial or personal gain to a person in a public office in a foreign country or an international organisation in connection with the performance of that function.
§ 6. The perpetrator of the offence referred to in Sections 1–5 shall not be liable to punishment if a financial or personal gain or a promise thereof has been accepted by the person in a public office and the perpetrator has notified a criminal prosecution authority and disclosed all relevant circumstances of the offence before that authority became aware of it.
3) **passive paid protection (Article 230 of the Criminal Code)**
Article 230. *§ 1. Any person who, invoking influence in a State or local government institution, international or domestic organisation or in a foreign organisational unit with public funds, or inducing or confirming the conviction of another person about the existence of such influence, undertakes to act as an intermediary in the settlement of a matter in exchange for a financial or personal gain or a promise thereof*
shall be liable to a term of imprisonment of between 6 months and 8 years.
§ 2. In a case of a lesser gravity, the perpetrator
shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.
4) **purchase of influence in the public sector (Article 230a of the Criminal Code)**
Article 230a. *§ 1. Any person who grants or promises to grant a financial or personal gain in return for acting as an intermediary in dealing with a matter in a State or local government institution, international or domestic organisation or in a foreign organisational unit with*

public funds, consisting in an illegal influence on a decision, action or omission of a person in a public office, in connection with the performance of that function
shall be liable to a term of imprisonment of between 6 months and 8 years.

§ 2. In a case of a lesser gravity, the perpetrator
shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.

§ 3. The perpetrator of the offence referred to in Section 1 or 2 shall not be liable to punishment if a financial or personal gain or a promise thereof has been accepted and the perpetrator has notified a criminal prosecution authority and disclosed all relevant circumstances of the offence before that authority became aware of it.

5) electoral venality (Article 250a(1) of the Criminal Code) and electoral bribery (Article 250a(2) of the Criminal Code).

Article 250a. *§ 1. Any person who, being entitled to vote, accepts a financial or personal gain or demands such a gain for voting in a particular manner*
shall be liable to a term of imprisonment of between 3 months and 5 years.

§ 2. The same penalty shall be imposed on any person who grants a financial or personal gain to a person entitled to vote in order to induce that person to vote in a particular manner or for voting in a particular manner.

§ 3. In a case of a lesser gravity, the perpetrator of the act referred to in Section 1 or 2
shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.

§ 4. If the perpetrator of the offence referred to in Section 1 or Section 3 in conjunction with Section 1 has notified criminal prosecution authority of the offence and the circumstances in which it was committed before that authority became aware of them, the court applies extraordinary leniency and may even waive the sentence.

6) **economic venality – in managerial positions (Article 296a(1) of the Criminal Code) and economic bribery (Article 296a(2) of the Criminal Code).**

Article 296a. *§ 1. Any person who, while holding a managerial position in an organisational unit performing economic activity or being a party to an employment relationship, contract of mandate or contract for a specific task with such a unit, demands or accepts a financial or personal gain or a promise thereof in exchange for abuse of rights granted to them or a failure to fulfil an obligation incumbent on them which may cause financial damage to this unit or which constitutes an act of unfair competition or an unacceptable preferential action for the benefit of a buyer or recipient of goods or services*
shall be liable to a term of imprisonment of between 3 months and 5 years.

§ 2. The same penalty shall be imposed on anyone who, in the cases specified in Section 1, grants or promises to grant a financial or personal benefit.

§ 3. In a case of a lesser gravity, the perpetrator of the act referred to in Section 1 or 2
shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.

§ 4. If the perpetrator of the act referred to in Section 1 causes significant property damage, they
shall be liable to a term of imprisonment of between 6 months and 8 years.

§ 5. The perpetrator of an offence referred to in Section 2 or Section 3 in conjunction with Section 2 shall not be liable to punishment if a financial or personal gain or a promise thereof has been accepted and the perpetrator has notified a criminal prosecution authority and disclosed all relevant circumstances of the offence before that authority became aware of it.

7) bribery of a creditor (Article 302(2) of the Criminal Code) and venality of a creditor (Article 302(3) of the Criminal Code).

Article 302. *[...]*

§ 2. Any person who grants or promises to grant a creditor a financial gain for acting to the detriment of other creditors in connection with bankruptcy proceedings or aimed at preventing bankruptcy
shall be liable to a term of imprisonment of up to 3 years.

§ 3. The same penalty shall be imposed on a creditor who, in connection with the proceedings referred to in Section 2, accepts a gain for an act committed to the detriment of other creditors, or demands such a gain.

8) **venality in sports (Article 46(1) of the Act on Sports of 25 June 2010 (Journal of Laws of 2019, item 1468, as amended)) and bribery in sports (Article 46(2) of the Act on Sports)**

Article 46. *1. Any person who, in connection with sports competitions organised by a Polish sports association or an entity acting on the basis of an agreement concluded with such an association or an entity acting under its authority, accepts a financial or personal gain or a promise thereof or demands such a gain or a promise thereof in exchange for unfair behaviour which may affect the result or course of the competitions*

shall be liable to a term of imprisonment of between 6 months and 8 years.

2. The same penalty shall be imposed on anyone who, in the cases specified in Section 1, grants or promises to grant a financial or personal gain.

3. In a case of a lesser gravity, the perpetrator of the act referred to in Section 1 or 2

shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.

4. Where the perpetrator of an act referred to in paragraphs 1 or 2 accepts or promises a financial gain of substantial value, or grants such a gain or a promise thereof, or demands such a gain or such a promise, they

shall be liable to a term of imprisonment of between 1 and 10 years

9) **sale of influence in sports (Article 48(1) of the Act on Sports) and purchase of influence in sports (Article 48(2) of the Act on Sports).**

Article 48. *1. Any person who, invoking influence in a Polish sports association or an entity operating under an agreement concluded with such an association or an entity operating under its authority, or inducing or confirming the conviction of another person about the existence of such influence, undertakes to act as an intermediary in determining a specific result or course of a sports competition in exchange for a financial or personal gain or a promise thereof*

shall be liable to a term of imprisonment of between 6 months and 8 years.

2. The same penalty shall be imposed on any person who grants or promises to grant a financial or personal gain in return for acting as an intermediary in determining a specific result or course of a sports competition consisting in illegally influencing the behaviour of a person performing a function in a Polish sports association or an entity acting on the basis of an agreement concluded with such an association or an entity operating under its authority in connection with the performance of that function.

3. In a case of a lesser gravity, the perpetrator of the act referred to in Section 1 or 2

shall be liable to a fine, restriction of liberty or imprisonment for up to 2 years.

10) **venality and bribery in pharmaceutical advertising (Article 128 of the Act of 6 September 2001 – Pharmaceutical Law (Journal of Laws of 2019, item 499, as amended)).**

Article 128. *Any person who, against the provisions of Article 58, grants or promises to grant a financial gain when advertising a medicinal product to persons authorised to issue prescriptions or persons trading in medicinal products or accepts such a gain*

shall be liable to a fine.

11) **venality of a manufacturer or trader (Article 54(1) of the Act on the Reimbursement of Medicines, Foods for Special Nutritional Purposes and Medical Devices of 12 May 2011 (Journal of Laws of 2020, item 357, as amended) – ARM), venality of a person authorised to issue prescriptions (Article 54(2) ARM), venality of a person supplying products subject to reimbursement (Article 54(3) ARM) and bribery (Article 54(4) ARM).**

Article 54. *1. Any person who, while manufacturing or trading in medicines, foods for special nutritional purposes or medical devices subject to reimbursement from public funds, accepts a financial or personal gain or a promise thereof or demands such a gain in return for behaviour affecting:*

1) trade in medicines, foods for special nutritional purposes or medical devices subject to reimbursement from public funds;

2) marketing or refraining from marketing a particular medicine, food for special nutritional purposes or medical device subject to reimbursement from public funds;

shall be liable to a term of imprisonment of between 6 months and 8 years.

2. The same penalty shall be imposed on any person who, being a person entitled to prescribe medicines, foods for special nutritional purposes or medical devices subject to reimbursement from public funds or orders referred to in Article 38(1), demands or accepts a

financial or personal gain or a promise thereof in return for issuing or refraining from issuing a prescription or order.

3. The same penalty shall be imposed on any person who, while supplying medicines, foods for particular nutritional purposes or medical devices to a healthcare provider, or while being a healthcare provider or representing a healthcare provider, requests or accepts a financial or personal gain in return for the purchase of a medicine, foods for particular nutritional purposes or medical device subject to public refunds.

4. The same penalty shall be imposed on any person who, in the cases specified in Sections 1–3, grants or promises to grant a financial or personal gain.

5. In a case of a lesser gravity the perpetrator of the offence referred to in Sections 1–4 shall be liable to a term of imprisonment of up to 3 years.

6. The perpetrator of an offence referred to in Section 4 shall not be liable to punishment if a financial or personal benefit or a promise thereof has been accepted and the perpetrator has notified a criminal prosecution authority and disclosed all relevant circumstances of the offence before that authority became aware of it.

In addition, Article 16 of the Act on Criminal Liability of Collective Entities for Offences of 28 October 2002 (Journal of Laws of 2020, item 358) sets out the rules of criminal liability of collective entities for offences and the rules of procedure for such liability. Therefore, collective entities are criminally liable for corruption offences specified in the following provisions: Article 228 of the Criminal Code, Article 229, Article 230 of the Criminal Code, Article 296a of the Criminal Code, Article 302(2) and (3) of the Criminal Code, as well as Article 46 and Article 48 of the Act on Sports, based on the principle of liability for an act consisting in the conduct of a natural person acting in the interest of that entity, if such conduct has brought or could bring an advantage to the collective entity.

26. Application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

Corruption in the legal sense is an offence prosecuted ex officio and is punishable to the same extent as provided for this type of offence, i.e. imprisonment (Article 37 of the Criminal Code), restriction of liberty (Article 34 of the Criminal Code), fine (Article 33(2) of the Criminal Code), as well as the following penal measures and compensatory measures:
– ban on occupying a specific position (e.g. traffic controller, car diagnostician);
– ban on practising a profession or occupying a specific position – Article 41(1) of the Criminal Code (e.g. doctor, teacher);
– ban on conducting specific business activity – Article 41(2) of the Criminal Code (e.g. construction activity or organising sports competitions);
– making the judgement public – Article 43b;
– forfeiture of property – Article 44 of the Criminal Code;
– forfeiture of a business – Article 44a of the Criminal Code (regulation introduced by the Act of 23 March 2017 (Journal of Laws of 2017, item 768) effective from 27 April 2017).
– forfeiture of gains – Article 45 of the Criminal Code (concerns proceeds of crime, whether obtained directly or indirectly).

27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

Potential obstacles to fighting corruption effectively include legal and practical constraints. The former are associated, for example, with the fact that numerous entities are equipped with legal instruments of protection (parliamentary, prosecutorial or judicial immunity), while the latter – with a kind of culture of corruption. The latter means that for many people corruption has become an almost normal way of dealing with small matters (speeding up the medical procedure, avoiding fines, admission to university, passing a university exam). It should be noted that the so-called petty corruption (corruption in everyday

life) is largely a product of communism, a system in which many Poles had to pay beforehand to have anything done. Hence, in opinion polls, this type of corruption has always had a greater margin of social tolerance. Nevertheless, this tolerance is steadily diminishing, and Poles are increasingly often clearly negative about corruption, regardless of its gravity. Another practical problem is often the reluctance to actually fight corruption on a large scale. This is primarily the case in situations where certain agencies do take certain actions, while other agencies undermine their entire struggle (in Poland it is common for courts to release defendants accused of corruption, indicating that the charge was not sufficiently proven, there was no connection between the financial gain received and the decision in question, which, consequently – in the court's opinion – did not constitute corruption, or the corruption was not extensive, and therefore caused little social harm). In all polls, large-scale corruption is unequivocally seen as reprehensible and Poles indicate that there are areas particularly vulnerable to it. These are: 1) business (tender processes); 2) justice system; 3) local government.

III. Media pluralism

A. Media regulatory authorities and bodies

28. Independence, enforcement powers and adequacy of resources of media authorities and bodies

In Poland the primary authority concerned with protection of media governance and media pluralism is the National Broadcasting Council (KRRiT). It is a constitutional authority. In accordance with the Constitution (Article 212 (1)) the National Broadcasting Council protects the freedom of speech, the right to information and public interest in radio and television broadcasting. Members of the National Broadcasting Council are appointed by the Sejm (two members), Senate (one member) and the President of the Republic of Poland (two members). The term of office of the Council is 6 years. A member of the National Broadcasting Council cannot be a member of a political party, trade union or carry out public activities which are incompatible with the reputation of the performed function. The terms and the mode of operation of the National Broadcasting Council, its organisation and detailed terms of appointing its members are specified by statute.

The specific competences of KRRiT are regulated by the broadcasting act.

According to Article 6 (1) thereof, the National Broadcasting Council protects freedom of speech in television, independence of broadcasters, and interests of the audience, as well as ensures openness and pluralism of radio and television broadcasting.

The tasks of the National Council include in particular:

- designing the country's policies regarding broadcasting in agreement with the Prime Minister;
- determining, within the limits of statutory empowerment, the conditions of conducting activity by the broadcasters;
- decision-making, within statutory limits, regarding concessions for distributing programmes;
- recognition as a social broadcaster or revoking that property, under conditions determined by the act;
- exercising control over broadcaster activity within limits determined by the act;
- organisation of examination of the content and reception of radio and television programmes;
- setting rates of fees for granting concession, entry into registry and subscription fee rates under conditions determined in the act of 21 April 2005 on subscription fees;
- assessment of draft legislative acts and international agreements regarding broadcasting;
- initiation of scientific and technical progress, and training of staff relevant to broadcasting;
- organisation and initiation of international cooperation regarding broadcasting;
- cooperation with appropriate organisations and institutions regarding the protection of copyright, rights of performers', producers and broadcasters of radio and television programmes.

Apart from the KRRiT, there is also the National Media Council. It does not have basis in the Constitution and functions under the act on National Media Council. The council is an organ appropriate for appointing and dismissing the personnel of public broadcasting authorities and Polish Press Agency,

hereinafter referred to as 'companies', and in other matters specified in the act. The Council executes its tasks under the principle of ensuring diligent performance of statutory tasks by the companies and the protection of their autonomy and editorial independence. The composition of the Council comprises five members, three of which are elected by the Sejm while two members are appointed by the President of the Republic of Poland. The term of office of the member of the Council is 6 years.

29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies

The composition of the National Council comprises five members appointed: 2 by the Sejm, 1 by the Senate and 2 by the President, among people with knowledge and experience regarding mass media. The broadcasting act (Article 7) does not provide for any additional criteria which must be fulfilled by the members of the council. The President of the National Council is elected out of their own ranks and are dismissed by the members of the National Council. Furthermore, at the request of its President, the National Council elects a Deputy President of the National Council out of their own ranks.
To become a member of the National Council a person has to:
1) have Polish citizenship;
2) have knowledge and experience in affairs associated with tasks and operation of media;
3) has not been convicted for an intentional offence.
2. Membership in the Council cannot be combined with:
1) conducting functions in an executive authority body;
2) membership in an authority of a local government body;
3) employment in central or local government administration;
4) employment at the Chancellery of the President of the Republic of Poland;
5) membership in the National Broadcasting Council or employment at its office.
Apart from that, a person possessing shares of a company or in other way participating in an entity being a provider of media services or a radio or television producer cannot be a member of the Council.
The composition of the Council comprises five members, three of which are elected by the Sejm while two members are appointed by the President of the Republic of Poland. The President of the Republic of Poland appoints the members of the Council among the candidates proposed by parliamentary clubs by formation whose representatives do not comprise the composition of the Council of Ministers (opposition clubs).

B. <u>Transparency of media ownership and government interference</u>

30. The transparent allocation of state advertising (including any rules regulating the matter)

Matters regulating advertisement in radio and television have been specified in the broadcasting act. It specifies which advertisements are forbidden, which are permitted and what percentage of the transmission time can be occupied by advertising messages. Most notably it is a certain innovation that the aforementioned act contains explanation of the term 'advertisement'. However, it is a definition established strictly for the purpose of this particular act. Nevertheless, it is worth mentioning here – "a commercial is any message not originating from the broadcaster which intends to promote sales or other means of using goods or services, supporting certain issues or ideas or achieving other effects desired by the advertiser, broadcasted for a fee or other form of remuneration. Most importantly, it is forbidden to use hidden advertisements, intertwined with broadcasted programmes. It is without question a measure primarily protecting the recipient.
Furthermore, it is forbidden to broadcast advertisements abusing the credulity of children, encouraging them to purchase products or services, urging them to pressure adults into making purchases and misuse the minor's trust in their parents, teachers and other persons. Also unacceptable is unjustifiable depiction of children in dangerous situations as well as affecting their subconsciousness in a hidden manner. The act also defines that an advertisement cannot: 1) violate human dignity; 2) contain discriminatory content regarding race, sex or nationality; 3) hurt religious or political feelings; 4) threaten physical, mental or

moral development of minors; 5) encourage behaviour detrimental to health, safety or environmental protection. Radio and television advertisements are also subject to the regulation of press law and norms of special acts (i.a. the act on alcoholism prevention). Advertisements should be explicitly separated from the programme and marked in a way which makes it obvious that they are advertisements and did not originate from the broadcaster. This solution is also adopted in press law and its intention is to ensure that the recipients can critically discern the message and avoid a situation in which they mistake an advertisement for journalistic content. An interesting regulation specifies the time which can be devoted to advertisements. The act states that they cannot exceed 15%, and advertisements broadcast alongside teleshopping cannot exceed 20% of daily broadcast time of a programme and can last no longer than 12 minutes each hour. The above mentioned terms involve commercial advertising. The so called social commercial campaigns are subject to different regulations. These are free of charge both in television and radio. Following the Regulation of 29 April 2011 of the National Broadcasting Council, Public Benefit Organisations may apply for unpaid broadcasting of social campaign advertisements. For that purpose Telewizja Polska and the Council for the Public Benefit Organisations have established the Social Campaign Commission which verifies advertising spots and schedules their broadcast on various channels. The letter should contain the description of a planned campaign, its scope and timeframe. In case of the lack of a spot, there is a possibility of sending the script/storyboard for assessment by the Commission (the Commission grants a promissory note for broadcasting which requires a preview of the final spot and final permission to broadcast). Every Public Benefit Organisation which applies for broadcasting a spot in free airtime is obliged to present up-to-date documents: NIP / KRS / REGON / FINANCIAL STATEMENT for the last year of activity / DECLARATION of payment of public broadcasting subscription fees by the Organisation.
Television and radio advertisement are subject to separate regulations. Details are available on internet websites.

31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

Information campaigns with social or political bias are a relatively new phenomenon in Poland. Initially they involved exclusively health-related issues (smoking cigarettes, drinking alcohol, fighting cancer). Later the campaigns also involved safety issues (e.g. actions intending to prevent paedophilia and – as a result – raising awareness of the problem in children and parents, activities regarding violence against women and, in broader context, domestic violence). The sphere of social issues also tackled the problem of depression, helping elders, road safety etc. Over time such campaigns started being a subject of political campaigns. They encompassed a variety of issues, mostly citizen activity regarding elections (Go vote! campaign), whose goal was to increase voter turnout. Today such campaigns also involve the judicial branch, whereas the attitudes presented are varied. Therefore, there are advertisement campaigns protecting the courts and judges (to make it as it once was) and campaigns which encourage conducting reforms (fair courts). The current information campaigns are primarily aimed at engaging environmental awareness (clean air), encouraging segregation of waste (mostly within the framework of local government campaigns). Public information campaigns also involve charity activities i.e. collection of money for a specific purpose or information about the possibility of transferring 1% of income tax to non-government organisations. It needs to be pointed out that in most cases the information campaigns involve broadly understood social issues (protection of health, ecology, crime prevention, promotion of safe traffic behaviour) and not political issues (participation in elections or the reform of the judiciary).

32. Rules governing transparency of media ownership

Division of owners and capital among the most popular television channels:

- TVP 1 – owner: Telewizja Polska; capital: Polish.
- Polsat – owner: Cyfrowy Polsat; capital: Polish.
- TVN – owner: Discovery; capital: American.

- TVP 2 – owner: Telewizja Polska; capital: Polish.
- TVP Info – owner: Telewizja Polska; capital: Polish.
- TVN24 – owner: Discovery; capital: American.
- TV 4 – owner: Cyfrowy Polsat; capital: Polish.
- TVN7 – owner: Discovery; capital: American.
- TV Puls – owner Telewizja Puls; capital: Polish.
- TTV – owner: Discovery; capital: American.
- Nowa TV – owner: ZPR Media; capital: Polish.
- Focus TV – owner: ZPR Media; capital: Polish.

Radio station market – here most of the listeners also tend to choose the largest foreign broadcasters (about 60%).

Division of owners and capital among the most popular radio stations:

- RMF FM – owner: Bauer Media Polska; capital: German.
- Radio Zet – owner: Czech Media Invest; capital: Czech.
- Jedynka – Program 1 Polskiego Radia – owner: Polskie Radio; capital: Polish.
- Trójka – Program 3 Polskiego Radia – owner: Polskie Radio; capital: Polish.
- VOX – owner: ZPR Media; capital: Polish.
- Radio Maryja – owner: Warszawska Prowincja Redemptorystów; capital: Polish.
- TOK FM – owner: Agora; capital: Polish.
- Antyradio – owner: Czech Media Invest; capital: Czech.
- RMF Classic – owner: Bauer Media Polska; capital: German.
- Dwójka – Program 2 Polskiego Radia – owner: Polskie Radio; capital: Polish.
- Radio ESKA – owner: ZPR Media; capital: Polish.
- Radio WAWA – owner: ZPR Media; capital: Polish.
- Meloradio (Radio Zet Gold) – owner: Czech Media Invest; capital: Czech.
- Chillizet – owner: Czech Media Invest; capital: Czech.
- Radio Plus sieć rozgłośni kościelnych – owner: Czech Media Invest; capital: Czech.

- Press market **–** most of the Polish publishing market is owned by foreign investors, in particular publishing houses with German capital.
- Polish capital dominates in daily and weekly newspapers, while the foreign in most magazines in colour and specialist magazines as well as periodicals for children and adolescents.

Division of owners and capital among the most popular daily newspapers in Poland:

- Fakt Gazeta Codzienna – owner: Ringier Axel Springer Polska; capital: German and Swiss.
- Gazeta Wyborcza – owner: Agora; capital: Polish.
- Super Express – owner: ZPR Media; capital: Polish.
- Rzeczpospolita – owner: Gremi Business Communication; capital: Polish.
- Dziennik Gazeta Prawna – owner: INFOR PL; capital: Polish.
- Przegląd Sportowy – owner: Ringier Axel Springer Polska; capital: German and Swiss.
- Gazeta Polska Codziennie – owner: Forum SA; capital: Polish.
- Puls Biznesu – owner: Bonnier Business (Polska); capital: Polish.
- Parkiet Gazeta Giełdy – owner: Gremi Business Communication; capital: Polish.

Division of owners and capital among the most popular weekly newspapers in Poland:

- Newsweek – owner: Ringier Axel Springer Polska; capital: German and Swiss.
- Gość Niedzielny – owner: Instytut Gość Media; capital: Polish.
- Tygodnik Polityka – owner: Polityka; capital: Polish.
- Sieci Prawdy – owner: Fratria; capital: Polish.
- Tygodnik Do Rzeczy – owner: Orle Pióro; capital: Polish.
- Gazeta Polska – owner: Niezależne Wydawnictwo Polskie; capital: Polish.
- WPROST – owner: PMPG Polskie Media; capital: Polish.
- Tygodnik Powszechny – owner: Tygodnik Powszechny spółka z o.o.; capital: Polish.
- Przegląd – owner: Fundacja ORATIO RECTA; capital: Polish.

What is interesting, in case of most regional daily newspapers such as Express Ilustrowany, Echo Dnia, Głos Wielkopolski, Dziennik Łódzki, Gazeta Pomorska, Polska Metropolia Warszawska, Dziennik

Zachodni etc. the owner is Polska Press with German capital (a part of a German Verlagsgruppe Passau concern).
Companies with German capital also dominate among the publishers of the most popular monthly magazines and television magazines: Bauer (e.g. Kobieta i Życie, Naj, Świat Kobiety, Twój Styl, Życie na Gorąco, Tele Tydzień, TO&OWO, Na Żywo, Tele Świat) and Burda Media (e.g. Dobre Rady, Claudia).
The rest of coloured magazines are funded by Swiss capital of Edipresse Polska – a Polish branch of an international Swiss Edipresse concern (e.g. Przyjaciółka, Party Życie Gwiazd, Pani Domu, Flesz, VIVA, Poradnik Domowy).
Among magazines with Polish capital there are i.a. Murator, Dobre Wnętrze, Moje Mieszkanie, M jak Mama, Poradnik Zdrowie, M jak Mieszkanie, Podróże.
The market of web portals – out of the three most popular general information portals only Wirtualna Polska is based on Polish capital.
Grupa Onet is managed by a German and Swiss Ringier Axel Springer Polska concern, whereas Grupa Interia.pl – by German Bauer Media Polska.
Also German are Serwisy Polska Press Grupy, including i.a. the classified advertisements portal Gratka.pl and information portals: i.a. containing information regarding local businesses at strefabiznesu.pl, portal for local communities at naszemiasto.pl, polskatimes.pl and the internet television portal at Telemagazyn.pl.
Of course, Grupa TVN (tvn24.pl, tvn24bis.pl) involves American capital.
Among internet portals with Polish capital apart from Wirtualna Polaka there are also Grupa Gazeta.pl and Grupa ZPR Media (websites such as se.pl, murator.pl. urządzamy.pl, mowimyjak.pl, tuznajdziesz.pl).

C. Framework for journalists' protection

33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

The primary legal act which regulates the activities of a journalist is the Press Law act. The act defines the notion of press (in Article 7(2) (1). The press are periodical publications, which do not constitute a closed uniform whole, are issued no rarer than annually, subject to the act of 21 August 1997 on the restriction of business activities by persons performing public functions, under title or name, serial number and date, and in particular: 1) newspapers and periodicals, 2) news agencies, 3) bulletins, 4) radio and television programmes.
Press also includes means of mass media both existing and in development through technological progress. Therefore, it can be assumed that the definition also encompasses content distributed on the internet.
A journalist is a person who edits, creates and prepares press material, employed by an editorial office or conducting such activity for and under authorisation of an editorial office.
In other words, a person commenting online posts is not a journalist because he/she is not commissioned by an editorial office to do so. Press Law does not apply to such a person. Press Law act imposes the following obligations on journalists: 1) obligation to exercise particular care and honesty in gathering and use of press material; 2) prohibition of publishing personal information and photographs of parties to a proceeding and witnesses; 3) prohibition of publishing information without consent of the persons sharing information; 4) prohibition of expressing opinion regarding a decision in court proceedings before issuing a decision in the 1st instance court; 5) prohibition of publishing information recorded in audio or video form without consent of persons sharing information; 6) requirement of authorisation of exact quotation of a statement if it was not published before; 7) prohibition of publishing information if a person sharing the information claims it constitutes a professional secret; 8) obligation to keep the identity of informants a secret.
In practice, the first of the above mentioned obligations (a) is of the highest priority because failure to observe thereof may lead to infringement of personality rights. The obligation to exercise particular care

and honesty in gathering press material involves primarily the examination of the factuality of gathered information or providing their source. This also means the assessment of information in context of other known facts. For example, while writing about embezzlement of money from a project on a basis of a denunciation from a person conflicted with the management, the journalist also mentions that audits at the non-government organisation did not confirm the loss of funds. This also applies to situations in which a journalist has justified suspicions regarding the facts which are not confirmed by appropriate authorities such as courts. For example, as a result of a journalist investigation negligence at a nursing home was found which could endanger the life of the patients. A journalist may publish such material if the social interest demands its immediate disclosure, but he/she may not claim an offence was committed. A journalist may only indicate that there is a suspicion of such an act. Responsibility for an infringement of the law due to publication of press material is subject to terms specified in the Civil Code. Press Law act introduces additional rules. They involve mostly the entity responsible for the infringement, namely the defendant, for example in a proceeding regarding infringement of personality rights. Who can be the defendant? Civil responsibility for breaking the law due to publishing of press material is borne by the author, editor or other person who led to the publishing of the material. This does not exclude the responsibility of the publisher. Responsibility may be borne by someone other than the author. For example, if during a live programme a participant insults other person, the legal responsibility shall be borne by the person who formulated the allegations. If the programme was recorded first and then aired, then it is the responsibility of the editors. It is worth remembering that personality rights are infringed not just by the first statement with a certain content but also its reproductions, unless the character of the statement informs about a past infringement of personality rights. The form of reproduction in this case is not important. This means that if the allegation was presented in a television programme and another person repeated it on his/her website, he/she shall also bear responsibility.
The key problem of media in Poland is therefore the lack of journalist confidentiality. Journalists notoriously breach the principle of impartiality, honesty and objectivity. Specialists point out that especially the press and internet transform into so called identity-based media which instead of presenting reliable information and varied opinions choose to offer a set of uniform viewpoints on a given topic, whereas the identity depends on preferred policies and parties. As a result when objectiveness and independence is expected of journalists, they claim their freedom of speech is being infringed and as a consequence they present an even more identity-based information profile which turns information into de facto commentary.
For more about the topic see https://kulturaliberalna.pl/2017/07/04/media-polityka-kontrola-polska/

34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

The Constitution guarantees freedom of speech and press. The authorities respected this right. Freedom of speech: The law forbids using hate speech, including distribution of anti-Semitic publications and public promotion of fascism, communism and other totalitarian systems and intentional offending of religious beliefs.
Violence and harassment: On 14 February the Regional Prosecutor’s Office in Katowice cancelled the investigation regarding an operator of a private information channel of TVN, Piotr Wacowski, who was suspected of promoting fascism. The case involved investigative report of the journalist displaying the members of Duma i Nowoczesność association, who were wearing Nazi uniforms and celebrated Hitler’s birthday in 2017. The Prosecutor's Office concluded that there is no evidence that Wacowski committed an offence.
Censorship or content restriction: The Constitution forbids censorship of press and social communication. At the same time the broadcasting act forbids, under penalty of a fine, revoking concession or other sanctions, promoting activities which threaten health or safety, promoting ideas in conflict with the law, morality or social interest, and requires that broadcasters “respect religious beliefs of the audience, in particular the Christian system of values”.
Critics point to the consistent domination of pro-government content in national news television.
Regulations regarding defamation / libel: Defamation by press and television journalists is an offence and includes public defamation or denigration of the President, members of parliament, ministers and

other national officials, the Polish nation, foreign heads of states and ambassadors, private persons and entities, as well as disrespecting or destruction of the state emblem, flag and other national symbols. Defamation without the involvement of media is punished by fine and community service. Courts rarely passed maximum penalty sentences and persons punished for defamation were generally subjected to fines or up to a year of imprisonment. Maximum sentence for insulting the President of the nation is three year imprisonment.

According to the Helsinki Foundation for Human Rights, journalists who were tried in cases regarding defamation were not sentenced to the maximum penalty. However, according to the Foundation, the penal consequences of a defamation may curb journalists, especially those working in local media where the authorities may wish to use the law against journalists. Owners of mass media, in particular small local independent newspapers are aware that the potentially high fines may threaten the existence of their publications. According to the latest data of the Ministry of Justice, in 2018 courts sentenced one person for insulting the President and three persons for insulting constitutional authorities of the State. In 2018, courts imposed fines on two persons for public defamation via media involving prosecution proceedings, conducted at the request of private persons who applied for prosecution against other persons. In 2018, there 116 convictions for public defamation via media within a criminal proceeding by private persons.

On 26 November, the Regional Prosecutor's Office in Katowice discontinued an investigation regarding a historian, who claimed in a press interview in 2015 that during World War II Poles killed more Jews in the occupied Poland than Nazis. The Regional Prosecutor's Office in Katowice stated that resolving cases of historical nature are not within its competences.

On 12 February, District Court in Łódź fined investigative reporter Wojciech Biedroń PLN 3.000 for publically insulting a judge, which involved providing false information about initiating a disciplinary proceeding by the court against the judge. Several journalists criticised the sentence as too harsh and disproportionate to the committed action.

Polish authorities do not restrict access to the internet and do not censor internet content. There are no credible sources regarding monitoring of private electronic communication or electronic mail by the authorities without justified legal basis. The counter-terrorism act adopted in 2016 allows the ISA to block internet websites without a court order in matters involving combating terrorism, preventing terrorism or prosecution of terrorist offences and allows them to disable telecommunication networks in case of a terrorist threat or observe foreign country citizens for up to three months without a court order. During the year, mass media and non-government organisations reported no cases of blocking websites by the ISA.

Regulations regarding defamation are also applicable to the internet.

35. Access to information and public documents

Terms regarding access to public information are determined in act of 6 September 2001 on access to public information (Journal of Laws No. 112, item 1198). The Act elaborates on Article 61 of the Polish Constitution on the right of citizens to be informed about the activities of public authorities. The Act orders state authorities (and other entities) to make available any information on public matters, i.e. public information (Article 1(1)). Classified information is excluded from this rule (Article 5(1)). Under the Act, the right to public information includes the right to obtain such information containing up-to-date knowledge of public matters without delay. The right to public information consists of the following rights:

- the right to obtain public information, including processed information,
- the right to view official documents,
- access meetings of elected collegial bodies of public authorities elected in general elections.

This right can be exercised by all citizens (Article 2(1)). Persons requesting public information must not be asked to state reasons for their request (Article 2(2)).

The general rule of disclosing all non-confidential information on public matters is specified in section 2 of the act. It indicated what information are subject to disclosure. It involves etc. information about:

- public authority bodies – including their legal status, organisation, competencies, assets, persons performing functions in them and their competencies;

- principles of operation of public authority bodies – including the methods of resolving cases, state of adopted cases and the order of their resolution, as well as registers, records and archives kept;
- policy of the authorities – including the intentions, draft normative acts programs regarding the execution of public tasks;
- public data – including official documents, position regarding public affairs adopted by the public officials, contents of speeches and assessments done by public authority bodies, information about the state of the country;
- public property.

Under the act, the meetings of elected collegial bodies have to be non-confidential and available. The act imposes preparation and disclosure of transcripts or minutes of the meetings.

The act also defines the notion of official documents which are subject to disclosure. An official document is content of declaration of interest or knowledge, recorded and signed in any form by a public official as set out in the Criminal Code, within the scope of its competencies, directed to another entity or placed in the file of the case (Article 6(2)).

In accordance with the act, the disclosure of public information is done in the following forms:

- announcement via internet Bulletin of Public Information,
- disclosure at the request of a person concerned,
- distribution in a publically available place or via information terminals.

According to the Act (Article 10(1)), public information which has not been made available in the Bulletin of Public Information is to be made available at the request of the interested party. Disclosure of information at the request is handled "without unnecessary delay", no later than 14 days from the date of submitting the request (Article 13(2)). If that is impossible, the applicant has to be informed within that period about the cause of the delay in delivering the information and a new deadline but no greater than 2 months. If the information can be delivered immediately in oral or written form, the applicant does not submit a written application. The institution disclosing the information has a duty to allow it to be copied, printed, sent or transferred onto a commonly used information storage medium.

There are also possible limitations in access to public information. Refusal to disclose information may only occur doe to the confidentiality (protection of personal information, right to privacy, state secrets, professional secrets, tax secrets, statistic secrets). Refusal is conducted in form of an administrative decision. Appeal against the decision is recognized within 14 days (Article 16(2)(1)). Apart from that, the regulations of Article 23 impose a fine, restriction of freedom or imprisonment up to one year for those who fail to disclose public information in spite of their duty to do so.

36. Other - please specify

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws.

37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

Legal changes conducted in recent years regarding systemic notions of the judiciary had their beginning in legislative initiative of members of parliament. Therefore, no social consultation or assessment of suggestions by judiciary circles had been done, which is required in case of government draft acts.

The proposed changes in legislation according to the mode of government's activity involving draft acts on functioning of the judiciary are normally subject to assessment by the National Council of the

Judiciary, judges' associations, judges themselves (via presidents of courts) and – if they involve those occupational groups – associations or trade unions of the judiciary employees. However, in Poland it is assumed that in practice the government does not execute (and should not execute) the right of executing legislative initiative within the extent of acts specifying the system of the judiciary authorities. This is done because it is assumed that in the system of separation and balance of authorities a legislative initiative of the government directed at the organisation of the judiciary could have been perceived as a form of repression against the judicial branch. Therefore, it is traditionally assumed that it is the members of parliament who can propose draft acts regarding the terms of the operation of the judicial branch. However, this involves certain limitations because draft acts proposed by members of parliament do not involve such strict conditions involving e.g. the necessity of conducting consultations. No less extensive discussion regarding the adopted legislative changes was present in mass media (television, press, radio, internet). Also non-government organisations and various think tanks submitted their comments regarding the adopted solutions.

38. Regime for constitutional review of laws

The system of constitutional control is well-established. It needs to be noted that the recent changes regarding the judicial branch did not change the adopted model of centralised control. The Constitution of the Republic of Poland of 2 April 1997 stipulates the exclusive role of the Constitutional Tribunal in controlling constitutionality. This means that there is a centralised model of controlling the compliance of the law with the constitution which excludes the possibility of dispersed control carried out by common courts. Therefore, whenever the constitutionality of adopted legal solutions is questioned, the case can be resolved only by the Constitutional Tribunal.

The Constitutional Tribunal has been established to decide in cases of: compliance of acts and international agreements with the constitution; compliance of acts with ratified international agreements whose ratification requires prior consent expressed in an act; compliance of provisions of the law issued by central government authorities with the constitution, ratified international agreements and acts; compliance of goals or activities of political parties with the constitution; constitutional appeal. Furthermore, the Constitutional Tribunal resolves disputes over competency between central constitutional national authorities. The above mentioned list of competences of the Constitutional Tribunal is exhaustive. Decisions of the Constitutional Tribunal are generally applicable and final. They are made by majority of votes. This means there are no legal remedies. It is worth noting that it is a notable departure from the principle of two instances which also in some way undermines the allegiance of the authority with appropriate judicial authority. Decisions of the Constitutional Tribunal are subject to immediate publishing at the official authority where the normative act was proclaimed. A decision of the Constitutional Tribunal, as a rule, enter into force on the day of their proclamation and always on *erga omnes* basis. However, the decision of the Tribunal itself may be may lead to the postponement of the entry into force of the judgement, which in case of an act cannot exceed 18 months, whereas a lower-order act – 12 months. If, in turn, a decision involves financial expenses which had not been taken into account in budget legislation, the Tribunal shall establish an expiry date of the normative act after hearing the opinion of the Council of Ministers. The possibility of establishing a grace period for entry into force of a decision of the Constitutional Tribunal is dictated by the care for uniformity and completion of the legal system. Its primary goal is preventing the legal gap in law or other situation that could prove more harmful to the legal system, in particular the recipients of the questioned regulations, than remaining in force – for a set period – of unconstitutional regulations (it should be noted that it is assumed that the period for which the Tribunal allows conditional remaining in force of the questioned regulations is a period intended for adoption and entry into force of a new regulation, compliant with constitutional standards). The decision issued by the Constitutional Tribunal regarding the inconsistency with the Constitution, an international agreement or a normative act, on the basis of which a binding court decision, final administrative decision or resolution in other cases had been made, is a basis for initiating proceedings, revoking a decision or other resolution.

The following parties may appeal to the Constitutional Tribunal: President of the Republic of Poland, Speaker of the Sejm, Speaker of the Senate, Prime minister, 50 members of parliament, 30 senators, First President of the Supreme Court, President of the Supreme Administrative Court, General Prosecutor, President of the Supreme Audit Office, Polish Ombudsman, National Council of the

Judiciary, authorities constituting local government entities and country-wide authorities of employees' organisations and trade organisations, churches and other religious associations, as well as everyone whose constitutional rights or freedoms have been infringed. The application legitimacy of these entities is not the same, however. Some of them possess a so called general application legitimacy which means they can question any and all legal acts (e.g. the President of the Republic of Poland, Prime Minister, Polish Ombudsman, a group of members of parliament or senators), some have only particular legitimacy which means that they can initiate a proceeding before the Constitutional Tribunal in relation to only those legal acts which are relevant to their scope of actions (see country-wide authorities of employees' organisations and trade organisations, churches and other religious associations). Furthermore, any court may present a legal question to the Constitutional Tribunal regarding the compliance of a normative act with the Constitution, ratified international agreements or an act. This is relevant in situations when answering a legal question is a condition of resolving proceedings before the court. That way the fundamental form of control conducted by the Tribunal, which is the abstract review (i.e. not associated with the circumstances of application of a questioned legal act in the legal system) is supplemented by concrete review (i.e. one whose initiation is determined by the practical application of a norm and the application is revealed as the problem with the constitutionality of the norm). It should be noted that outside a legal question, another form of initiating concrete review is the constitutional appeal, which is available to anyone whose constitutional rights or freedoms have been infringed. However, it is worth noting that the Polish model of constitutional appeal is narrow in scope. This means that a person may question only a normative act on the basis of which a court or administrative authority has made a final decision regarding its freedoms and rights, which means that the subject of the appeal cannot be an administrative decision or a court judgement itself (only the act of application of law).

The Constitutional Tribunal comprises 15 judges appointed individually by the Sejm for 9 years. The position of a judge of the Constitutional Tribunal can be occupied only by a person with legal knowledge. Appointment into the Tribunal for a second term is not allowed. President and Vice-President of the Constitutional Tribunal are appointed by the President of the Republic of Poland from candidates presented by the General Assembly of the Judges of the Constitutional Tribunal. Judges of the Constitutional Tribunal are independent and are subject only to the Constitution. It should be noted that similarly to judges of common courts, administrative courts or military courts the independence of a judge of the Constitutional Tribunal is closely related with the mode of adjudication. Therefore the limit of independence of a judge of the Constitutional Tribunal is the adjudication process involving the resolved cases. Similarly to judges of the above mentioned courts, judges of the Constitutional Tribunal are being provided with working conditions and remuneration appropriate for the dignity of their office and the scope of their duties. Furthermore, during the period of occupying their position judges of the Constitutional Tribunal cannot be a member of a political party, trade union or carry out public activities which are incompatible with the rules of autonomy of courts and independence of judges. It should be therefore noted that the regulation is relevant also to the retired judges of the Constitutional Tribunal, namely those after the lapse of their term (which is expressly decided by statutory regulations). They still possess the status of a judge (in which e.g. their independence is expressed). Judges of the Constitutional Tribunal have immunity similarly to the above mentioned court judges. In compliance with the regulations of the Constitution of the Republic of Poland, a judge of the Constitutional Tribunal cannot be subject to criminal law or imprisonment without prior consent of the Constitutional Tribunal. A judge cannot be detained or arrested, unless in the case of being caught in the act of an offence if their detention is necessary to ensure the proper course of the proceedings. The President of the Constitutional Tribunal, who can request immediate release of the detained, is to be immediately informed of the arrest. The above mentioned regulations relevant to the judges of the Constitutional Tribunal are very similar to regulation relevant to the judges of common and administrative courts. The key difference is that court judges are subject only to the Constitution and legislation whereas the judges of Constitutional Tribunal only to the Constitution (which is the very essence of the Tribunal) and the fact that constitutional judges are appointed for terms whereas other judges are in office for indefinite periods. It can be pointed out as a confirmation of such a stance that according to the regulations of the Constitution the organisation of the Constitutional Tribunal and the mode of the procedure before the Tribunal is determined by legislation. This means that the legislature has relative freedom in regulating those issues, similarly as in the case of courts. Therefore as it is the case with appropriate judges, the terms of the system and functioning of the Constitutional Tribunal and its judges are regulated by the provisions of

the Constitution. In particular these norms have been subjected to statutory regulation which can shape these questions with relative freedom, of course while taking into account the limitations defined by the Constitution.

A. Independent authorities

39. Independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

The Constitution of the Republic of Poland establishes the Supreme Audit Office, the Ombudsman (Commissioner for Human Rights) and the National Broadcasting Council as bodies of state audit and law protection. These authorities do not fit into Montesquieu's classic separation of powers system. In some aspects, however, they do form a fairly homogeneous group of entities that share certain properties. Furthermore, they exercise control over compliance with the law and they hold rights connected with ensuring this compliance. This is why they are sometimes labelled 'the fourth estate', typically referred to as the controlling authority. At the same time, it should be recognised that this is a completely new group of state authorities which resulted from the process of constitutional evolution over the last hundred years. It cannot be incorporated into the current authority triad in any way, hence the preferred name of the new group i.e. 'the fourth estate' or the inspection authority.

– The Supreme Audit Office is the principal state audit body. It is subordinate to the Sejm and acts in accordance with the principles of collegiate responsibility. Its task is to audit the activity of government administration bodies, the National Bank of Poland (NBP), state legal persons and other state organisational units with regard to legality, sound management, efficacy and integrity. In addition, the Office may audit the activity of local self-government bodies, municipal legal persons and other municipal organisational units with regard to legality, sound management and integrity. The indicated entities related to the local government in a broad sense are thus not controlled in respect of efficacy or purposefulness. This provision is expressive of the independence of the local government, secured by the Constitution of the Republic of Poland. The Office may also audit the activity of other organisational units and economic entities (entrepreneurs) to the extent to which they use state or municipal assets or resources, or fulfil financial obligations to the State. Such audit may be conducted with regard to legality and sound management.

The Supreme Audit Office shall submit the following documents to the Sejm: an analysis of the state budget execution and monetary policy guidelines; an opinion on the vote of approval for the Council of Ministers; and pronouncements on the results of audits, recommendations and statements as provided for by law. In addition, the Supreme Audit Office is obliged to submit to the Sejm annual reports on its activity.

The President of the Supreme Audit Office is appointed by the Sejm, with the consent of the Senate, for a six-year term of office. The President may be reappointed only once. The President may not hold any other post, except for a professorship at a university, nor perform any other professional activity. The exception is the post of university professor. As in the case of judges of the courts and judges of the Constitutional Tribunal, the President of the Supreme Audit Office may not belong to a political party, a trade union nor perform any public activity that cannot be reconciled with the requirements of the post of the President. The President of the Supreme Audit Office also has immunity, as do court judges, judges of the Constitutional Tribunal and members of the State Tribunal. Pursuant to the provisions of the Constitution of the Republic of Poland, the President of the Supreme Audit Office shall not be held accountable nor deprived of liberty without the prior consent of the Sejm. The President of the Supreme Audit Office may be neither detained nor arrested, except for cases when the President has been apprehended in the commission of an offence and in which detention is necessary for securing the proper course of proceedings. The Marshal of the Sejm shall be notified forthwith of such detention and may order an immediate release of the person detained. Just as in the case of regulations concerning courts and tribunals, the organisation and mode of work of the Supreme Audit Office are, likewise, provided for by law.

– Commissioner for Human Rights safeguards the liberties and human and citizen’s rights as set forth in the Constitution and other normative acts. The scope and manner of the operation of the Commissioner for Human Rights are specified in the law. The Commissioner is nominated by the Sejm upon the approval of the Senate for 5 years. The Commissioner shall report to the Sejm and the Senate

in respect of their activities and also on the observance of the human and citizen rights and liberties on an annual basis. Similarly to the President of the Supreme Audit Office, the Commissioner cannot occupy any other position, with the exception of that of a university professor, nor shall they carry out other professional commitments. The Commissioner may not be affiliated with any political party or trade union. They are not allowed to perform any public activities which could conflict with the dignity of their office. Immunity is granted to the Commissioner of Human Rights in the same vein as to the judges of the courts, the Constitutional Tribunal, members of the State Tribunal, and the President of the Supreme Audit Office. It follows that they may not be held criminally responsible or deprived of liberty without the prior consent of the Sejm. Moreover, the Commissioner may not be detained or arrested, except for detaining for cases when they have been apprehended in the act and if the detention is necessary to ensure the proper course of the proceedings. The Marshal of the Sejm shall be notified forthwith of such detention and may order an immediate release of the person detained.
The provisions of the Constitution stipulate that the Commissioner be independent similarly to court judges, judges of the Constitutional Tribunal, and members of the Tribunal of State. The activity of the Commissioner is characterised by autonomy and independence from other state authorities. Unlike the entities indicated above, however, the Commissioner reports to the Sejm under the principles set out in the law. The autonomy and independence of the Commissioner are thus similar to that of court judges, judges of the Constitutional Tribunal, and members of the State Tribunal only to a certain extent. The primary and fundamental difference between those bodies lies in the Commissioner's accountability to the legislative authority i.e. the Sejm. However, the link between the Commissioner and the Sejm, readily apparent in relation to the appointment of the first by the latter upon the consent of the Senate, is not merely organisational in its nature. It is also functional, as follows from the fact that the core of the Commissioner's activity is to specify the work of the Sejm as to the protection of the rights and freedoms of the individual.
– The National Broadcasting Council, as stipulated in the provisions of the Constitution of the Republic of Poland, is to safeguard the freedom of speech, the right to information as well as to safeguard the public interest regarding radio broadcasting and television. In the course of its activity, the National Broadcasting Council issues regulations, and adopts resolutions in individual cases. Its members are appointed by the Sejm, the Senate and the President of the Republic of Poland, yet there are no detailed rules in this regard. As a consequence, the ordinary legislator enjoys exceptional liberty which allows for arbitrary regulation. This manifests itself clearly in the fact that the Constitution does not even provide the number of the National Broadcasting Council members). A member of the National Broadcasting Council may not belong to a political party, a trade union or perform public activities incompatible with the dignity of their function. Pursuant to the provisions of the Constitution, the principles and mode of operation of the National Broadcasting Council, its organisation and detailed rules for appointing its members are provided for by the law.
The general assessment of entities comprising the 'fourth estate' (inspection authority) in line with the Constitution of the Republic of Poland must take into consideration the fact that these bodies of state audit and law protection are, first and foremost, connected with the Sejm to a greater or lesser extent, either organisationally or functionally. Secondly, these bodies are subject to exceptionally flexible regulations at the constitutional level, which allows for considerable leeway in their legal specification (with the explicit criteria stipulated in the constitution fulfilled). Thirdly, such bodies are also provided for in other parts of the constitutional regulation, as illustrated by the institution of the Ombudsman for Children, whose constitutional legitimacy is rooted in Article 72(4). Furthermore, there are various bodies established at the sub-constitutional level such as ombudsmen, the Personal Data Protection Office, or the Office of Competition and Consumer Protection. The doctrine of constitutional law also indicates that ombudsmen-type bodies form one of the most extensive groups of entities, rooted not only in constitutional but also statutory provisions. It often includes highly specialised bodies, e.g. Insurance Ombudsman or Patient Ombudsman. All these organs are relatively easily accessible. Each of them operates in the extensive domain of protection of rights and freedoms, whether these are comprehensive or very particular.

B. Accessibility and judicial review of administrative decisions

40. Modalities of publication of administrative decisions and scope of judicial review

Judicial review is one of many types of reviewing administrative activities. The others include the following: 1) parliamentary review; 2) state review (conducted by the Supreme Audit Office); 3) prosecutor's review; 4) review of the Commissioner for Human Rights; 5) departmental review (within a given department of administration subordinate to a given minister); 6) social review.

Judicial review is the most complex mechanism of administrative review. The court decision repeals or amends the operation of the administration. However, these activities are not of a supervisory nature. Legitimacy is virtually the only criterion for examining the correctness of judicial review. The subject of the review are the following: 1) administrative decisions; 2) normative acts; 3) contractual activities of administrative bodies.

A. Administrative court review

The review conducted by administrative courts since January 1, 2004. The law as it stands governs the administrative judiciary issues by means of two acts: the Act of July 25, 2002 – *the Law on the structure of administrative courts*, and the Act of 30 August 2002 – *the Law on proceedings before administrative courts*. Both acts are effective from January 1, 2004. Their adoption automatically repealed *the Act on the Supreme Administrative Court*.

The structure of administrative judiciary consists of:

• Voivodship administrative courts, which hears cases in the first instance

• The Supreme Administrative Court, which hears appeals against the decisions of first instance courts, adopts resolutions elaborating on legal issues, supervises the activities of voivodship administrative courts and processes so-called other matters within its jurisdiction. Administrative courts review public administration by adjudicating on appeals against the following (under Article 3 of the Law on proceedings before administrative courts):

1) administrative decisions;

2) decisions issued in administrative proceedings, for which an appeal is eligible, decisions which terminate proceedings, as well as decisions on the substance of a case;

3) decisions issued in enforcement proceedings and security proceedings, which can be appealed;

4) acts or activities in the field of public administration other than those referred to in (1)-(3) which regard rights or obligations arising from legal provisions;

4a) written interpretations of tax law provisions issued in individual cases;

5) acts of local law issued by local government bodies and local government administration bodies;

6) acts of local government bodies and their associations, other than those referred to in (5), regarding matters of public administration;

7) acts of supervision over the activities of local government units;

8) failure to act or prolonged conduct of proceedings in the cases referred to in (1)-(4a).

9) Administrative courts also adjudicate in cases where the provisions of special laws stipulate judicial review and subsequently apply the measures specified in these provisions.

As the legal acts indicated in the introduction entered into force at the beginning of 2004, the functioning of the administrative judiciary in Poland underwent a significant change with the application of the principle of two instances.

Information regarding cassation:

1. a cassation appeal may be lodged to the Supreme Administrative Court against a decision (a judgement or a ruling) of a voivodship administrative court terminating the proceedings in a given case;

2. the persons entitled to lodge a cassation appeal are: the Commissioner for Human Rights, a prosecutor, a party

3. the cassation motion may be filed on the basis of:

– an infringement of substantive law in the proceedings as a result of misinterpretation or incorrect application

– a breach of procedural standards, if such a failure might have had a significant impact on the decision

4. the appeal may be prepared by the following persons exclusively: a judge, an advocate, a legal counsel, a (public) notary, a prosecutor, Professor in Law, Ph.D. (doktor habilitowany) in Law (provided that these persons are a party to the proceedings or an agent or representative of a party; the prosecutor may also be taken into account during a prosecutor's review), the Commissioner for Human Rights, a tax consultant, or a patent agent.

The applicant, a participant in the proceedings, a party, a person exercising their powers in enforcement proceedings or other proceedings aimed at enforcing a court decision, may lodge an appeal against the prolonged conduct of the proceedings. An appeal against tardiness in the proceedings brought before a voivodship administrative court or the Supreme Administrative Court is filed and examined by the latter. An appeal against prolonged enforcement proceedings is filed with the regional court.

B. Direct review of administrative decisions conducted by other courts

(1) Direct review conducted by a civil court.

The review of the legitimacy of administrative acts is conducted by common courts in the following cases:

a) an appeal to the competent district court against a decision dismissing a claim or resulting in the removal of a voter from the voter registration list;

b) pursuant to the provisions of the *Act on the Law of the Vital Records*, a motion for annulment, rectification or determination of the content of an act, filed by the prosecutor, head of a Civil Registry Office or the person concerned;

c) pursuant to the provisions of the *Act on enforcement proceedings in administration*, should a person's motion (other than the person obliged to provide) filed to an enforcement authority for the exemption of a thing or right from enforcement be rejected, the person has the right to apply for the exemption of the thing or right from administrative enforcement proceedings pursuant to the provisions of the Code of Civil Procedure;

d) pursuant to Article 161 of the Code of Administrative Procedure, a party which has suffered a loss as a result of the repeal of a final, non-defective administrative decision or an amendment thereto (the execution of which might have resulted in the loss of life or health, loss to the national economy, or other important interests of the state) should be granted compensation by virtue of the decision of the administrative body which amended or repealed the contested act. In the event of circumstances specified in the Act of 17 June 2004 amending the Civil Code and some other acts, the decision regarding damages is subject to review not by the common court but by the administrative court.

e) Pursuant to Article 287 of the *Act on proceedings before administrative courts*, a party which has suffered damage as a result of a given decision is entitled to compensation from the authority which issued that decision, provided that:

– the administrative court repeals the contested decision by means of a decision, whereas the authority which issued the decision dismisses the case upon second consideration;

– the administrative court annuls the act by means of a decision or establishes a legal obstacle to the annulment of the act.

(2) Direct review conducted by a social insurance court

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Examination of the Social Security Office (ZUS) decisions in cases pertaining to social security. Pursuant to the provisions of the *Act on the examination by courts of matters in the field of labour and social security law* of 18 April 1985, the authorities competent to decide on the issue in question are the relevant organisational units of common courts, whereas the review is to fulfil the following criteria:

– non-cassation nature;

– the decision may be amended in whole or in part;

– a case may be referred to ZUS for the purposes of supplementing the decision or the evidence;

– the proceedings comply with the provisions of the Code of Civil Procedure.

(3) Direct review conducted by a criminal court

The criminal court examines the legitimacy of administrative acts in a case where it is possible to refer a decision of a public administration body or appeal against according to a specific substantive or procedural norm.

(4) Direct review of decisions by the Anti-monopoly Court.

The President of the Office for Competition and Consumer Protection may file an appeal to the District Court in Warsaw – Court for Competition and Consumer Protection – within 2 weeks of the date of delivery of the decision

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An appeal is to be lodged according to the principles stipulated in the Code of Civil Procedure. As a result, the following situations may ensue:

I. The President acknowledges the appeal:
They repeal or amend their decision (in whole or in part) without referring the case to court, they notify the party and send their new decision to the party;
II. The appeal is brought to court:
– the court may reject the appeal or accommodate it;
– if the appeal is upheld, the court repeals or amends the decision (in whole or in part) and issues a decision on the substance of the case;
– it is permitted to appeal against a decision which asserts anti-competitive conduct as well as against a decision disclaiming such conduct;
– decisions of the President of the Office may not be challenged by means of the measures provided for in the Code of Administrative Procedure in respect of the resumption, repeal, amendment or annulment of a decision.
– Matters not regulated in the *Act on proceedings before the President of the Office*, the provisions of the Code of Administrative Procedure apply, except for evidence cases (Articles 227-315 of the Code of Administrative Procedure).

C. Indirect review

Indirect review is aimed not at the administrative decision or the authority's decision but rather the decision-making process and its correctness. By means of indirect review, the court examines whether the proceedings have been conducted in a legitimate manner. The final decision merely constitutes evidence in the case.

D. Judicial review of administrative normative acts

The basis for reviewing normative acts is currently rooted in the Act of 1 August 1997 *on the Constitutional Tribunal*. Pursuant to its provisions, the Constitutional Tribunal is a body of judiciary appointed to review the following:
a) the compliance of international laws and agreements with the Polish Constitution;
b) the compliance of laws with international agreements ratified upon
prior consent expressed in the law;
c) the compliance of legal regulations issued by central constitutional
state authorities with the Constitution, ratified
international agreements, and laws;
d) constitutional appeals,
e) disputes over power between central constitutional
state authorities,
f) the compliance of the objectives or activities of political parties with the Constitution. Pursuant to constitutional provisions, the entities entitled to submit a motion regarding the conformity of a given law or another normative act with the Constitution or another legislative act include the following:
1) the President of the Republic of Poland;
2) the President of the Council of Ministers;
3) the Marshal of the Sejm;
4) the Marshal of the Senate;
5) 50 deputies;
6) 30 senators;
7) the First President of the Supreme Court;
8) the President of the Chief Administrative Court;
9) the Minister of Justice – the General Prosecutor;
10) the Commissioner for Human Rights;
11) the President of the Supreme Audit Office;
12) the National Council of the Judiciary, insofar as the act pertains to the independence and the autonomy of courts and judges;
13) national trade union bodies;
14) national authorities of lawmakers' and professional organisations;
15) churches and other religious associations;
16) bodies of local government units;
17) entities referred to in Article 79 of the Constitution;
18) courts in circumstances specified in the Constitution;

Upon asserting the non-compliance of a given normative act with the Constitution, law, or any other relevant act by means of a Constitutional Tribunal decision and in the absence of resolving the issue, the Constitutional Tribunal may:
– repeal the act to the extent indicated in the decision,
– suspend the act in whole or in part from the date of delivery of the adjudgement.
The *Act on Local Self-Government* of 8 March 1990 introduced the review of normative acts of commune bodies by the Supreme Administrative Court (currently an administrative court). The review corresponds to two models:
I. The court examines, evaluates and adjudicates a given resolution of the commune body, which may be appealed against by:
a) the supervision authority indicated by law under conditions stipulated therein,
b) anyone whose legal interest or entitlement has been violated by a resolution or order (provided that the applicant has previously requested the commune body to remove the violation, which is a procedural requirement); the challenged normative act is regulated by means of administrative law.
II. Legitimacy review of the resolution of the supervisory body pertaining to a specific decree and not an act of the local government unit (in respect of the legitimacy of the decree itself and the contested decision.) Local government administration bodies are typically the supervisory bodies in such cases.
The commune (municipal association) may lodge an appeal against the decision of the supervisory body regarding a decree issued by its body. The circumstances and conditions are provided for in the *Act on Local Self-Government*. The appeal is lodged with an administrative court. This model also applies to normative acts of district and voivodship bodies, as well as local authorities of general government administration.
E. Judicial review of the contractual activities of the administration
The contractual activity of the administration comprises public administration activity based on civil law. It consists of agreements to which an administrative body is a party.
– it has no specific features;
– it ensues in compliance with the general principles of the court jurisprudence;
– an administrative authority can be both a plaintiff and a defendant;
– in case of disputes, the provisions of Code of Civil Procedure apply;
– the legal effects of an adjudgement in respect of the administrative authority are the same as in the case of other entities subject to judicial jurisdiction.

41. Implementation by the public administration and State institutions of final court decisions

Ensuring effective enforceability of administrative court decisions is a complex issue and raises many questions, not only in respect of the correctness of the solutions adopted in the procedural law but also the position of administrative courts in the system. It is for this reason that the legal means enabling the final decisions to be enforced need to be adapted to the particular form administrative courts administer the law. This form manifests itself in the review of public administration activities and the resulting cassation powers with regard to their legitimacy. On the one hand, this calls for instruments enabling administrative bodies which are competent in this matter to execute court judgements. On the other hand, this demands that the individual be provided with effective measures which, should the administration fail to act, would allow the individual to initiate proceedings before an independent and impartial court in order to persuade the authority to comply with the instruction indicated in the decision. Being a substantive right of a government unit, the right to execute a court judgement thus requires the state to implement appropriate solutions for ensuring effective enforcement of a final judgement of an administrative court which decides on rights and obligations.
Given the relevant provisions stipulated in the Law on Proceedings before Administrative Courts, it may be concluded that the legislator deemed it indispensable to grant the individual the right to submit a special type of appeal i.e. an appeal against a failure to enforce a judgement. This is supposed to be a certain remedy to prevent authorities from acting too slow in this matter. Although the subject of the appeal is a request for a fine to be imposed on the authority, this sanction is only one of the means of combating the administration idleness in this regard. In addition to the fine, the legislator also provides for the possibility of claiming damages from the slow authority and, above all, for the right of the court to make a substantive decision, which is granted only exceptionally in administrative court proceedings.

This proves that the issue of enforceability of administrative court decisions is crucial for ensuring effective judicial protection and requires not only disciplinary but also repressive measures. The latter, for instance, is addressed in the draft amendment in the form of the proposed right to be conferred to courts, whereby they could order the authority to grant the applicant an amount of money not exceeding a half of the fine imposed on the authority. This solution recognises and extends the procedural rights of the government unit. It also confirms that the implementation of final court decisions is of the essence not only for the purposes of protecting the established legal order but primarily in the light of the obligation to safeguard the rights and freedoms of the individual.

C. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

It can be assumed that a civil society in Poland cannot be built using a top-down approach. It may only emerge as a result of grassroots efforts. It is thus difficult to create a single institutional framework for civil society activities. Legislation regarding foundations and similar initiatives may be important, but it is only grassroots activity of citizens that can be expressive of an authentic civil society. Still, the legal acts central to the functioning of civil society include the following:

– the Act of April 6, 1984 on foundations (amended several times)
– the Act of 7 April, 1989 on associations (amended several times)
– the Act of 24 April, 2003 on public benefit activities and volunteering
– the Act of May 23, 1991 on trade unions
– the Act of 11 July, 2014 on petitions
– the Act of March 14, 2003 on a nationwide referendum
– the Act of 15 September, 2000 on a local referendum
– the Act of 24 June, 1999 on the implementation of a legislative initiative by citizens.

In a discussion on the experience of a civil society, it should be noted that Polish research emphasises three orientations, key directions or variants thereof. The first concentrates on the idea of a solidary society, contrasting the notion of a civil society with individualistic attitudes of citizens. Following this definition, the measure of a civil society is the involvement of citizens in helping others, i.e. volunteering. The second variety of a civil society is the idea of a politically engaged society. It recognises that the measure of commitment is the participation of citizens in elections and referendums (gauged by means of election turnout), their engagement in political parties, and attendance at various protest events (strikes, demonstrations, pickets, etc.). The third type pertains to various non-political initiatives. However, this does not concern volunteering as such but rather activities focused on various social or economic problems. This type of civil society supports the development of ecological organisations and movements. It is, in particular, characterised by efforts and activities which are often spontaneous, short-lived, triggered by emerging problems, which is why it is sometimes called the *ad hoc* civil society.

43. Other – please specify

It should be pointed out that the Council of Ministers is currently at an advanced stage of work on a new act on the transparency of public life. The primary purpose of the proposed act is to improve the integrity of the Polish state. The changes put forward by the proponent aim at organising and systematising the currently existing provisions. They also entail the introduction of novel solutions, unprecedented in the Polish law. Their common objective is to reinforce the transparency of how the state and its assets are managed. The provisions proposed in this draft establish enhanced controlling power of authorities both in the institutional and social aspect. The act will contribute to increased efficiency of state management.

It will also greatly reinforce the existing anti-corruption mechanisms in Poland. The draft act on the transparency of public life was envisaged to encompass the principles of transparency of public life, previously scattered in dozens of legal acts, in a single one. The proponents also decided to standardise the rules for submitting the declaration of financial interests, including their control, scope, and liability for failure to submit a declaration by persons obliged to do so under current regulations. The list of persons obliged to submit such a declaration now includes further public officials employees, whose scope of duties or rights justifies the use of declarations of financial interests as an instrument of preventing and controlling threats of corruption, bribery and venality. Another objective which motivated the proponents was to introduce the principles and means of protecting the so-called whistleblowers into the Polish legal order. These are people whose cooperation with the judiciary involves reporting information about crimes possibly committed by an entity with which they are bound by an employment contract or another contractual relationship. This cooperation may, in effect, adversely affect their personal, professional and material situation.

One of the more salient points of the draft was also to determine the principles of counteracting corrupt practices both in the economic sphere and in public life. The proposed act determines internal anti-corruption procedures which are to be implemented by an at least medium-sized entrepreneur within the meaning of the Act of July 2, 2004 on the freedom of economic activity (Journal of Laws of 2016, item 1829, as amended) and the person managing a public finance sector unit. For this reason, it was necessary to incorporate in a single legal act the existing provisions of the Act of 21 August 1997 on the restriction of business activity by persons performing public functions (Journal of Laws of 2006, No. 216, item 1584, of as amended), the Act of 6 September 2001 on access to public information (Journal of Laws of 2016, item 1764, as amended), and the Act of 7 July 2005 on lobbying in the process of legislating (Journal of Laws of 2017, item 248). These laws will be repealed upon the entry into force of the draft act.