

**Text of the Act submitted to the Senate in accordance with Article 52 of the Rules of the Sejm**

**ACT**

of 13 January 2023

**Amending the Act on the Supreme Court and Certain Other Acts<sup>[1]</sup>**

Article 1. The Act of 8 December 2017 on the Supreme Court (Journal of Laws [Dz.U.] of 2021, item 1904, and of 2022, item 480, 1259, 2280 and 2600) shall be amended as follows:

1) in Article 27a:

a) in § 1:

– in point 1:

– – letter (a) shall be repealed,

– – in letter (b), the sixth and ninth indents shall be repealed,

– point 2 shall read as follows:

“2) for permission to hold prosecutors and trainee prosecutors criminally responsible or to detain them;”,

b) in § 3:

– point 1 shall be repealed,

– in point 2, an introduction to the enumeration shall read as follows:

“2) involving prosecutors and trainee prosecutors with regard to:”,

c) in § 4, point 1 shall read as follows:

“1) appeals against rulings of disciplinary tribunals of the first instance in the cases involving prosecutors and trainee prosecutors, as well as decisions and orders that put an end to the possibility of deciding a case by adjudication;”,

2) in Article 29:

a) § 4 shall be repealed,

b) § 5 shall read as follows:

“§ 5. In addition to the Supreme Court’s ability to examine, on an *ex officio* basis, the assurance of the right to a tribunal which is independent, impartial and established by law, it is also permissible to examine whether a judge of the Supreme Court or a judge delegated to perform judicial functions in the Supreme Court fulfils the requirements of independence, impartiality and establishment by law, taking into account the circumstances of his/her appointment and his/her conduct after appointment, at the motion of the entitled person referred to in § 7, if in the circumstances of a particular case this may lead to a breach of the standard of independence, impartiality or establishment by law.”,

c) § 7 shall read as follows:

“§ 7. A party to or a participant in the proceedings before the Supreme Court in the cases referred to in § 6, as well as the competent court if there is a serious doubt in this regard, shall be entitled to file the motion.”,

d) after § 7, the following § 7a shall be added:

“§ 7a. In cases considered by a panel of judges, a member of the adjudicating panel may inform the chairperson of the circumstances justifying the filing of the motion referred to in § 5.”,

e) § 8 shall read as follows:

“§ 8. The motion shall be filed with the Supreme Administrative Court through the court hearing the case within a week from the date on which the person entitled to file the motion was informed of the composition of the adjudicating panel. The right to file a motion shall expire upon the lapse of the time limit referred to in the first sentence. The Supreme Court shall inform the person entitled to file a motion of the composition of the adjudicating panel in the first legal process served in the case and then in each subsequent legal process if the composition of the adjudicating panel has changed. Article 871(1) of the Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws [Dz.U.] of 2021, item 1805, as amended.<sup>[2]</sup>) shall apply.”,

f) § 11 shall read as follows:

„§ 11. The Supreme Administrative Court shall inform the competent body of the professional self-government to which the representative belongs of the dismissal of a motion that does not meet the requirements referred to in § 9.”,

g) § 14–19 shall read as follows:

“Article 14. If the person entitled to file a motion has filed motions against more than one judge assigned to the adjudicating panel or motions have been filed in the same case by several persons entitled to file a motion, the Supreme Administrative Court may order that the motions be combined for the purpose of considering them jointly. In the case of joint consideration, the motions shall be considered by the Supreme Administrative Court panel assigned to consider the motion that was filed first.

§ 15. The Supreme Administrative Court shall consider the motion *in camera* through a panel of 5 judges selected by lot from among all the judges of the Supreme Administrative Court, after hearing the judge to whom the motion relates, unless hearing is impossible or very difficult. The hearing may be in writing.

§ 16. The Supreme Administrative Court shall issue a ruling within 2 weeks from the filing date of the motion.

§ 17. The Supreme Administrative Court shall dismiss the motion if it is unfounded.

§ 18. Upon granting the motion, the Supreme Administrative Court shall exclude the judge from hearing the case. The exclusion of a judge from participation in a particular case shall not be the basis for excluding that judge from other cases considered with his/her participation.

- § 19. The Supreme Administrative Court shall, *ex officio*, within 3 days, prepare a statement of reasons for the decision issued upon consideration of the motion.”,
- h) § 21 shall read as follows:
- “§ 21. The decision issued upon consideration of the motion may be appealed against to the Supreme Administrative Court constituted of 7 judges selected by lot from among all the judges of the Supreme Administrative Court. The judge who participated in the issuance of the decision being challenged shall be excluded from the selection by lot.”,
- i) § 23 shall read as follows:
- “§ 23. The Supreme Administrative Court shall consider the appeal *in camera* within 2 weeks from the date of its filing.”,
- j) § 25 shall read as follows:
- “§ 25. A final decision of the Supreme Administrative Court issued upon consideration of the motion shall not be subject to a motion for the reopening of proceedings or an application for revision.”;
- 3) in § 6 of Article 72:
- a) point 1 shall read as follows:
- “1) the content of the judicial decision, including taking into account a possible breach of Article 26(3) or Article 29(2) and (3), or the situation where the judicial decision issued with the participation of a particular judge of the Supreme Court is vitiated by an error in the interpretation and application of national or European Union law or in the establishment of facts or in the evaluation of evidence;”,
- b) point 3 shall read as follows:
- “3) examination of the fulfilment by the judge of the requirements of independence, impartiality and establishment by law.”;
- 4) in § 1 of Article 73, points 1 and 2 shall read as follows:
- “1) in the first instance – the Supreme Administrative Court constituted of 3 judges of the Supreme Administrative Court;
- 2) in the second instance – the Supreme Administrative Court constituted of 5 judges of the Supreme Administrative Court.”;
- 5) in the second sentence in § 3 of Article 97, the words “Supreme Court” shall be replaced by the words “Supreme Administrative Court”.

Article 2. The Act of 21 August 1997 – Law on the Organization of Military Courts (Journal of Laws [Dz. U.] of 2022 item 2250) is hereby amended as follows:

- 1) in Article 23a:
- a) § 3 shall be repealed,
- b) § 4 shall read as follows:
- “§ 4. In addition to the court’s ability to examine, on an *ex officio* basis, the assurance of the right to a tribunal which is independent, impartial and established by law, it is also permissible to examine whether a judge fulfils the requirements of independence, impartiality and establishment by

law, taking into account the circumstances of his/her appointment and his/her conduct after appointment, at the motion of the entitled person referred to in § 7, if in the circumstances of a particular case this may lead to a breach of the standard of independence, impartiality or establishment by law.”,

c) § 7 shall read as follows:

“§ 7. A party to the criminal proceedings before a military court in the cases referred to in § 5, as well as the competent court if there is a serious doubt in this regard, shall be entitled to file the motion.”,

d) after § 7, the following § 7a shall be added:

“§ 7a. In cases considered by a panel of judges, a member of the adjudicating panel may inform the chairperson of the circumstances justifying the filing of the motion referred to in § 5.”,

e) § 14 shall read as follows:

“Article 14. If the motion is granted, a copy of the decision together with a statement of reasons shall be served on the judge to whom the motion relates. The judge may, within 3 days, file a motion with the Supreme Administrative Court that the case be considered again. The Supreme Administrative Court constituted of 5 judges selected by lot from among all the judges of the Supreme Administrative Court shall, within 7 days, either uphold the decision to exclude the judge or revoke the decision to exclude the judge and dismiss the motion. Until such time that the case is considered by the Supreme Administrative Court, the judge shall attend to urgent business.”;

2) in § 4 of Article 37:

a) point 1 shall read as follows:

“1) the content of the judicial decision or the situation where the judicial decision issued with the participation of a particular judge is vitiated by an error in the interpretation and application of national or European Union law or in the establishment of facts or in the evaluation of evidence;”,

b) point 3 shall read as follows:

“3) examination of the fulfilment by the judge of the requirements of independence, impartiality and establishment by law.”;

3) in Article 39a:

a) in § 1:

– in point 1, letter (b) shall read as follows:

“b) the Supreme Administrative Court constituted of 3 judges of the Supreme Administrative Court, in cases of disciplinary offenses having the characteristics of deliberate crimes prosecuted by public indictment or deliberate tax crimes, or cases in which the Supreme Court has submitted a request for the consideration of a disciplinary case together with the issuance of a finding of error, as well as cases referred to in Article 37(2)(3);”,

– point 2 shall read as follows:

“2) in the second instance – the Supreme Administrative Court constituted of 3 judges of the Supreme Administrative Court.”;

b) § 2a shall read as follows:

“§ 2a. The cases referred to in Article 30 shall be decided in the first instance by the Supreme Administrative Court constituted of 1 judge of the Supreme Administrative Court, and in the second instance by the Supreme Administrative Court constituted of 3 judges of the Supreme Administrative Court.”,

- c) § 2b shall be repealed,
- d) § 4 shall read as follows:

“§ 4. If, due to the exclusion of judges, the case cannot be considered in a particular disciplinary tribunal and it is also not possible to hand over the case to another equivalent disciplinary tribunal, the Supreme Administrative Court shall hand over the case for consideration to the appropriate disciplinary tribunal established for judges of common courts.”.

Article 3. The Act of 27 July 2001 – Law on the Organization of Common Courts (Journal of Laws [Dz.U.] of 2020, item 2072, as amended<sup>[3]</sup>) shall be amended as follows:

- 1) in Article 42a:

- a) § 3 shall read as follows:

“§ 3. In addition to the court’s ability to examine, on an *ex officio* basis, the assurance of the right to a tribunal which is independent, impartial and established by law, it is also permissible to examine whether a judge fulfils the requirements of independence, impartiality and establishment by law, taking into account the circumstances of his/her appointment and his/her conduct after appointment, at the motion of the entitled person referred to in § 6, if in the circumstances of a particular case this may lead to a breach of the standard of independence, impartiality or establishment by law.”,

- b) in § 6, the full stop shall be replaced by a semicolon in point 7 and the following point 8 shall be added:  
“8) the competent court if there is a serious doubt in this regard.”,
  - c) after § 6, the following § 6a shall be added:

“§ 6a. In cases considered by a panel of judges, a member of the adjudicating panel may inform the chairperson of the circumstances justifying the filing of the motion referred to in § 4.”,

- d) § 13 shall read as follows:

“§ 13. If the motion is granted, a copy of the decision together with a statement of reasons shall also be served on the judge to whom the motion relates. The judge may, within 3 days, file a motion with the Supreme Administrative Court that the case be considered again. The Supreme Administrative Court constituted of 5 judges of the Supreme Administrative Court selected by lot from among all the judges of the Supreme Administrative Court shall, within 7 days, either uphold the decision to exclude the judge or revoke the decision to exclude the judge and dismiss the motion. Until such time that the case is considered by the Supreme Administrative Court, the judge shall attend to urgent business.”;

- 2) in Article 55, § 5 shall be repealed;

- 3) in § 3 of Article 107:

- a) point 1 shall read as follows:

“1) the content of the judicial decision, including taking into account a possible breach of Article 42a(1) and (2) or Article 55(4), or the situation where the judicial decision issued with the

participation of a particular judge is vitiated by an error in the interpretation and application of national or European Union law or in the establishment of facts or in the evaluation of evidence";

b) point 3 shall read as follows:

"3) examination of the fulfilment by the judge of the requirements of independence, impartiality and establishment by law.";

4) in Article 110:

a) in § 1:

– in point 1, letter (b) shall read as follows:

"b) the Supreme Administrative Court constituted of 3 judges of the Supreme Administrative Court, in cases of disciplinary offenses having the characteristics of deliberate crimes prosecuted by public indictment or deliberate tax crimes, or cases in which the Supreme Court has submitted a request for the consideration of a disciplinary case together with the issuance of a finding of error, as well as cases referred to in Article 107(1)(3);",

– point 2 shall read as follows:

"2) in the second instance – the Supreme Administrative Court constituted of 3 judges of the Supreme Administrative Court.";

b) § 2a shall read as follows:

"§ 2a. The disciplinary tribunal of the district in which the judge under investigation serves shall have territorial jurisdiction to consider the cases referred to in Article 37(5) and Article 75(2)(3). The cases referred to in Article 80 and Article 106zd shall be decided in the first instance by the Supreme Administrative Court constituted of 1 judge of the Supreme Administrative Court, and in the second instance by the Supreme Administrative Court constituted of 3 judges of the Supreme Administrative Court.",

c) § 2b shall be repealed,

d) in the second sentence in § 3, the words "Supreme Court – the Professional Responsibility Chamber" shall be replaced by the words "Supreme Administrative Court";

5) in Article 112c, the words "President of the Supreme Court in charge of the work of the Professional Responsibility Chamber" shall be replaced by "President of the Supreme Administrative Court";

6) in Article 114, § 7 shall read as follows:

"§ 7. Together with the notification of the charges, the disciplinary officer shall request the Supreme Court to appoint a disciplinary tribunal for the consideration of the case in the first instance. The Supreme Administrative Court shall appoint that tribunal within seven days from the date of receipt of the request.";

7) in Article 114a, § 3 shall read as follows:

"§ 3. The decision of the disciplinary tribunal on the imposition of a fine may be appealed against to the Supreme Administrative Court constituted of 1 judge of the Supreme Administrative Court.".

Article 4. The Act of 25 July 2002 – Law on the Organization of Administrative Courts (Journal of Laws [Dz. U.] of 2022, item 2492) shall be amended as follows:

1) in Article 5, § 1c shall be repealed;

2) in Article 5a:

a) § 1 shall read as follows:

“§ 1. In addition to the court’s ability to examine, on an *ex officio* basis, the assurance of the right to a tribunal which is independent, impartial and established by law, it is also permissible to examine whether a judge of an administrative court or a judge delegated to perform judicial functions in an administrative court fulfils the requirements of independence, impartiality and establishment by law, taking into account the circumstances of his/her appointment and his/her conduct after appointment, at the motion of the entitled person referred to in § 3, if in the circumstances of a particular case this may lead to a breach of the standard of independence, impartiality or establishment by law.”,

b) § 3 shall read as follows:

“§ 3. The applicant and the participant in the proceedings acting as a party shall be entitled to file the motion in judicial administrative proceedings in the cases referred to in § 2 and the accused shall be entitled to file the motion in disciplinary proceedings. The competent court shall also be entitled to file the motion if there is a serious doubt in this regard.”,

c) after § 3, the following § 3a shall be added:

“§ 3a. In cases considered by a panel of judges, a member of the adjudicating panel may inform the chairperson of the circumstances justifying the filing of the motion referred to in § 2.”,

3) in Article 9, the existing content shall be numbered as § 1 and the following § 2 shall be added:

“§ 2. The Supreme Administrative Court shall also be a disciplinary tribunal in cases of judges of common courts, judges of military courts and judges of the Supreme Court under the rules set forth in other laws.”,

4) in § 6 of Article 48:

a) point 1 shall read as follows:

“1) the content of the judicial decision, including taking into account a possible breach of Article 5(1a) and (1b), or the situation where the judicial decision issued with the participation of a particular judge is vitiated by an error in the interpretation and application of national or European Union law or in the establishment of facts or in the evaluation of evidence;”,

b) point 3 shall read as follows:

“3) examination of the fulfilment by the judge of the requirements of independence, impartiality and establishment by law.”.

Article 5. 1. Cases:

- 1) of disciplinary nature involving Supreme Court judges,
- 2) considered by the Supreme Court in connection with disciplinary proceedings conducted under the acts amended by Article 2 and Article 3,
- 3) for permission to hold a judge criminally responsible,
- 4) for the reopening of proceedings under Article 18 of the Act of 9 June 2022 Amending the Act on the Supreme Court and Certain Other Acts (Journal of Laws [Dz.U.] item 1259),

– initiated prior to, and still pending at the time of, entry into force of the present Act, falling within the competence of the Professional Responsibility Chamber of the Supreme Court, shall be taken over and handled by the Supreme Administrative Court.

2. Procedural actions performed in the cases referred to in paragraph 1 shall remain effective, unless the Supreme Administrative Court decides otherwise.

Article 6. 1. If a motion of the reopening of proceedings referred to in Article 18(1) of the Act of 9 June 2022 Amending the Act on the Supreme Court and Certain Other Acts was not filed before the date of entry into force of the present Act, a judge entitled to file the motion under Article 18(1) of that Act may file such motion with the Supreme Administrative Court within 3 months of the date of entry into force of the present Act.

2. In the cases referred to in Article 5(1), which were definitively concluded before the date of entry into force of the present Act by the Supreme Court in the Professional Responsibility Chamber, the judge in respect of whom a ruling of the Supreme Court was issued may file a motion with the Supreme Administrative Court for the reopening of proceedings within 3 months from the date of entry into force of the present Act.

3. The motions referred to in paragraphs 1 and 2 shall be considered by the Supreme Administrative Court constituted of 3 judges.

4. The provisions of Article 18(3)-(6) and (8) of the Act of 9 June 2022 Amending the Act on the Supreme Court and Certain Other Acts shall apply accordingly to the motions referred to in paragraphs 1 and 2.

Article 7. In the disciplinary cases falling within the competence of the Professional Responsibility Chamber of the Supreme Court prior to the date of entry into force of the present Act, referred to in Article 5(1)(1) and (2), the Supreme Administrative Court shall, *ex officio*, at the first hearing of the case, consider the decision of the Professional Responsibility Chamber or the Disciplinary Chamber of the Supreme Court, abolished under Article 8(1) of the Act of 9 June 2022 Amending the Act on the Supreme Court and Certain Other Acts, on the suspension from office of a judge against whom disciplinary proceedings were initiated or against whom a resolution was issued permitting that he/she be held criminally liable and his/her salary or emoluments be reduced for the duration of the suspension or the disciplinary proceedings.

Article 8. 1. In cases falling within the competence of the Professional Responsibility Chamber of the Supreme Court referred to in Article 5(1), which were filed before the date of entry into force of the present Act and not concluded by a final decision by that date, the period of limitation shall be extended by the length of its running time from:

- 1) 15 July 2021 until the date of entry into force of the present Act, if the case was filed with the Supreme Court before 15 July 2021,
- 2) the filing of the case with the Supreme Court until the date of entry into force of the present Act, if the case was filed with the Supreme Court on or after 15 July 2021,

– unless the period of limitation expired before the entry into force of the present Act.

2. If the period of limitation, including after application of paragraph 1, would have expired before the end of 12 months from the date of entry into force of the present Act, the period of limitations shall expire on that date.



Article 9. Within 14 days of entry into force of the present Act, the President of the Supreme Court in charge of the work of the Professional Responsibility Chamber shall hand over the files of the cases referred to in Article 5(1) to the President of the Supreme Administrative Court.

Article 10 The time limits referred to in:

- 1) Article 29(16), (19) and (23) of the Act amended in Article 1, in the wording set out in the present Act,
  - 2) Article 23a(14), third sentence, of the Act amended in Article 2, in the wording set out in the present Act,
  - 3) Article 42a(13), third sentence, of the Act amended in Article 3, in the wording set out in the present Act,
- which began to run but not ended before the date of entry into force of the present Act shall be interrupted and shall begin to run anew on the day following the date on which the case file was handed over to the Supreme Administrative Court.

Article 11. The Act shall enter into force 21 days after its publication.

MARSHAL OF THE SEJM

/ – / Elżbieta Witek

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<sup>[1)]</sup> This Act amends the following Acts: the Act of 21 August 1997 – Law on the Organization of Military Courts, the Act of 27 July 2001 – Law on the Organization of Common Courts, and the Act of 25 July 2002 – Law on the Organization of Administrative Courts.

<sup>[2)]</sup> Amendments to the consolidated text of the Act concerned were published in the Journal of Laws [Dz. U.] of 2021, item 1981, 2052, 2262, 2270, 2289, 2328 and 2459, and of 2022, item 1, 366, 480, 807, 830, 974, 1098, 1301, 1371, 1692, 1855, 1967, 2127, 2140, 2180, 2339, 2436, 2600 i 2687.

<sup>[3)]</sup> Amendments to the consolidated text of the Act concerned were published in the Journal of Laws [Dz.U.] of 2021, item 1080 and 1236, of 2022, item 655, 1259, 1933 and 2642.