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Criminal Liability of Magistrates (ECPRD Request No. 4653)¹

Odpowiedzialność karna sędziów (wniosek ECPRD nr 4563)

The study at the request of the ECPRD presents the legal provisions on the criminal liability of judges in Poland. The provisions of the Constitution of the Republic of Poland regarding irremovability and immunity of judges are given, as well as selected articles of the Act of 27th July 2001 – the Law on the System of Common Courts.

Keywords: ECPRD, judges, Constitution

W odpowiedzi na zapytanie ECPRD wskazano przepisy prawa dotyczące odpowiedzialności karnej sędziów w Polsce. Przedstawiono postanowienia Konstytucji dotyczące nieusuwalności i immunitetu sędziowskiego, jak również wybrane artykuły ustawy z 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych.

Słowa kluczowe: ECPRD, sędziowie, Konstytucja

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In response to ECPRD Request No. 4653 regarding „Criminal Liability of Magistrates” the Bureau of Research provides the following information:

Please provide regulations in the legislation on the criminal liability of magistrates.

In Poland, provisions on criminal liability of judges² are included in the Constitution of the Republic of Poland³ and in the Act of 27 July 2001 – the Law on the System of Common Courts⁴.

¹ *Criminal Liability of Magistrates (ECPRD Request No. 4653)* prepared on September 10, 2021, as part of cooperation in the European Centre for Parliamentary Research and Documentation (Europejskie Centrum Badań Parlamentarnych i Dokumentacji); BAS-ZSP-2176/21.

² The term „magistrate” is not used in the Constitution and in the Law on the System of Common Courts: in reply to ECPRD Request, relevant provisions on criminal liability of judges are provided.

³ Konstytucja Rzeczypospolitej Polskiej, Journal of Laws [*Dziennik Ustaw*] 1997, No. 78, item 483, as amended, consolidated text in English available at: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁴ Ustawa z 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych, consolidated text: Journal of Laws [*Dziennik Ustaw*] 2020, item 2072, consolidated text in English ava-

The Constitution of the Republic of Poland:**Article 180**

1. Judges shall not be removable.
2. Recall of a judge from office, suspension from office, transfer to another bench or position against his will, may only occur by virtue of a court judgment and only in those instances prescribed in statute.
3. A judge may be retired as a result of illness or infirmity which prevents him discharging the duties of his office. The procedure for doing so, as well as for appealing against such decision, shall be specified by statute.
4. A statute shall establish an age limit beyond which a judge shall proceed to retirement.
5. Where there has been a reorganization of the court system or changes to the boundaries of court districts, a judge may be allocated to another court or retired with maintenance of his full remuneration.

Article 181

A judge shall not, without prior consent granted by a court specified by statute, be held criminally responsible nor deprived of liberty. A judge shall be neither detained nor arrested, except for cases when he has been apprehended in the commission of an offence and in which his detention is necessary for securing the proper course of proceedings. The president of the competent local court shall be forthwith notified of any such detention and may order an immediate release of the person detained.

The Law on the System of Common Courts

Article 80. § 1. A judge shall not be detained or held criminally liable without the permission of a competent disciplinary court. The foregoing does not apply to detention where a judge was caught in the act of committing an offence, should such detention be necessary to ensure the appropriate course of proceedings. Until a resolution allowing for the judge to be held criminally liable is issued, only urgent actions can be taken.

§ 2. The president of the court of appeal having competence over the place of detention is immediately notified about the detention of a judge. The president may order an 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 about the detention of a judge.

§ 2a. A motion for the permission to hold the judge criminally liable, if not lodged by a public prosecutor, should be drafted and executed by an advocate or a legal counsel authorised on the basis of a respective power of attorney.

§ 2b. If the motion for the permission to hold the judge criminally liable does not fulfil the formal requirements of a pleading provided for in the Code of Penal Procedure or is manifestly unfounded, the president of the disciplinary court refuses to accept it. The decision on refusal to accept the motion may be appealed against in the disciplinary court competent to consider the motion.

§ 2c. The disciplinary court issues a resolution allowing for the judge to be held criminally liable if a reasonable suspicion arises that the judge has committed the offence. The resolution resolves the issue concerning the permission to hold the judge criminally liable and includes the justification therefor.

§ 2d. The disciplinary court shall examine a request for criminal proceedings to be brought against a judge within 14 days of its receipt by the disciplinary court.

§ 2da. If a motion for criminal proceedings or for remand in custody refers to a judge who was arrested in flagrante delicto or an offence subject to imprisonment of up to at least 8 years, an offence referred to in Article 177(1) of the Criminal Code in conjunction with Article 178(1) of the Criminal Code and in Article 178a(1) or (4) of the Criminal Code and who remains in custody, the disciplinary court shall adopt a resolution on the motion within 24 hours of its receipt by the disciplinary court. A resolution allowing criminal proceedings to be brought against a judge or for their remand in custody shall be enforceable immediately.

§ 2e. Prior to the issuance of the resolution, the disciplinary court shall hear the disciplinary commissioner, the judge, a representative of the authority or the person who filed the motion, if present. The failure to appear on the part of the foregoing persons or on the part of the defence counsel does not withhold the consideration of the motion.

§ 2f. The judge subject to proceedings may access the documents enclosed to the motion. However, when filing the motion to the disciplinary court, the public prosecutor may reserve that, in the interest of the preparatory proceedings, such documents or a part thereof may not be disclosed to the judge.

§ 2g. If the public prosecutor filed the reservation referred to in Article 80(2f), the president of the disciplinary court immediately refers the case to be heard at the meeting. The disciplinary court may refuse the judge access to documents enclosed to the motion.

§ 2h. If a public prosecutor when lodging the motion for the permission to hold the judge criminally liable at the same time moves for provisional detention of the judge, the resolution allowing for the judge to be held criminally liable also includes the permission to arrest and detain the judge, unless the disciplinary court decides otherwise.

§ 3. (repealed)

§ 4. When ruling in the case referred to in Article 80(1), the disciplinary court may be satisfied with the statement of the judge to the effect that they file for the issuance of a resolution on the permission to hold them criminally liable.

Article 81. § 1. For minor offences, a judge is liable to disciplinary actions exclusively, subject to Article 81(2).

§ 2. A judge may give permission to hold them criminally liable for minor offences referred to in Article 81(3) in accordance with the said provision.

§ 3. If a judge commits a minor offence referred to in Chapter XI of the Act of 20 May 1971 – the Code of Minor Offences (Journal of Laws of 2015, item 1094, 1485, 1634, and 1707), the judge's acceptance of a penalty ticket or the payment of a fine, if the penalty ticket is not issued in the presence of the subject, referred to in Article 98(1) item 3 of the Act of 24 August 2001 – the Code of Procedure for Minor Offences (Journal of Laws of 2016, item 1713), is deemed as a consent of the judge to be held liable in this form.

§ 4. A consent of the judge to be held liable under criminal law as provided for in paragraph 3 excludes liability to disciplinary actions.

Article 110. § 1. The disciplinary cases against judges shall be heard:

1) in the first instance:

- a) by disciplinary courts at appeal courts by a bench of three judges;
- b) by the Supreme Court by a bench of two judges of the Disciplinary Chamber and one lay judge of the Supreme Court for cases in the matter of disciplinary misconduct that satisfies the criteria of an intentional crime prosecuted by public indictment or an intentional fiscal offence or in cases in which the Supreme Court has requested that a disciplinary case be examined and a finding of error be issued;

2) in the second instance, by the Supreme Court, adjudicating by a bench of two judges of the Disciplinary Chamber and one lay judge of the Supreme Court.

§ 2. Furthermore, disciplinary courts are competent to adjudicate in cases referred to in Article 37(5), Article 75(2) item 3 and Article 80.

§ 2a. To hear cases referred to in art. 37 (5) and art. 75(2) item 3, the place of jurisdiction is the disciplinary court in whose region the judge subject to the proceedings serves, and to hear cases referred to in Article 80, the place of jurisdiction is the disciplinary court in which the proceedings are conducted, and in urgent cases also another disciplinary court.

§ 3. The disciplinary court in the region in which the judge who is subject to disciplinary proceedings performs their service shall be excluded from hearing cases referred to in paragraph 1(1)(a). The disciplinary court competent to hear the case shall be specified by the President of the Supreme Court heading the Disciplinary Chamber at the request of the disciplinary commissioner.

§ 4. [*repealed*]

§ 5. A disciplinary court of the first instance may adjudicate in off-site sessions in a regional court, within the local competence area of which the accused holds the post of a judge, unless the interest of justice opposes thereto.

Article 119. Should the misconduct meet the criteria of an offence, the disciplinary court hears the case ex officio as regards the permission to hold the judge

criminally liable and issues the resolution referred to in Article 80(1), which shall not withhold the disciplinary proceedings.

Article 120. § 1. Upon the penal proceedings against the judge being closed with a final ruling, the court or the public prosecutor sends the case files to a competent disciplinary commissioner. If no disciplinary proceedings were initiated, the disciplinary commissioner undertakes disciplinary actions, even if a judgement of acquittal was rendered in the penal proceedings.

§ 2. If a final judgement was rendered with respect to the judge, which, pursuant to the act, results in the judge's dismissal from their post, the disciplinary court notifies the Minister of Justice of the fact and the Minister of Justice orders the dismissal of the penalised judge, even if the disciplinary judgement concerning the imposition on the judge of a penalty more lenient than the dismissal from the post has already been executed.

Article 121. § 1. The defendant, the disciplinary commissioner, the National Council of the Judiciary and the Minister of Justice may appeal against a judgement issued by the disciplinary court of first instance, as well as against decisions and instructions that make it impossible to hand down a judgment. The appeal shall be filed within 30 days and the time-limit for each entitled party shall start running on the date of service of the ruling or instruction.

§ 2. The appeal shall be examined within two months of the date of its receipt by the disciplinary court of second instance.

§ 3. In appeal proceedings, Article 454 of the Code of Criminal Procedure shall not apply.

§ 4. The court of appeal shall examine the case within the scope of appeal, and, if the appeal measure specifies objections to the decision, also within the scope of those objections. The court of appeal shall examine the case in a wider scope in circumstances referred to in Articles 435, 439(1) and the first sentence of Article 455 of the Code of Criminal Procedure, or if it finds the ruling to be manifestly unjust.

§ 5. If the disciplinary court of first instance examined a disciplinary case at a session, the court of appeal shall also examine the case at a session, unless it is necessary for the proper examination of the case to take evidence during a hearing directly from the defendant's explanations, witness testimonies, opinions of expert witnesses or other significant evidence.

§ 6. The court of appeal shall examine a disciplinary case at a hearing on the basis of evidence included in the case file, unless it decides that it is necessary for the proper examination of the case to take evidence directly from the defendant's explanations, witness testimonies, opinions of expert witnesses or other significant evidence.

Article 122. § 1. A judgment of the disciplinary court may not be appealed against in cassation.

§ 2. A judgment of the disciplinary court of second instance may be appealed against to a different bench of the same court if the judgment sentenced the de-

fendant to a disciplinary penalty despite the previous judgment of the disciplinary court of first instance acquitting the defendant or discontinuing the proceedings.

§ 3. The judgment referred to in paragraph 2 shall become final after the time-limit for filing an appeal with a different bench of the disciplinary court of second instance has expired without an appeal having been brought.

§ 4. The time-limit for submitting an appeal against a judgment with a different bench of the disciplinary court of second instance shall be 30 days from the service of the judgment. The provisions concerning the proceedings before the disciplinary court of second instance shall apply *mutatis mutandis* to the appeal proceedings before a different bench of the disciplinary court of second instance.

Article 123. § 1. Should the dismissal from the office be adjudicated, and the disciplinary court had not suspended the judge in the performance of their professional duties, the judgement results in the suspension of the judge in the performance of their professional duties and in the reduction of their remuneration by 50 percent for the period of suspension. Article 129(3) applies accordingly.

§ 2. The presiding judge of the disciplinary court of the first instance sends a copy of the final judgement of the disciplinary court to the National Council of the Judiciary and to the Minister of Justice, as well as to the president of the competent court and the board of the said court.

§ 3. The Minister of Justice executes the judgement as regards penalties specified in Article 109(1) items 4 and 5, and the president of the regional court and the president of the court of appeal execute the judgement as regards penalties specified in Article 109(1) item 3, with respect to judges of the given court.

Article 129. § 1. Where disciplinary proceedings or proceedings for incapacitation have been initiated against a judge, as well as where the disciplinary court issues a resolution allowing for the judge to be held criminally liable, the disciplinary court may suspend such a judge in the performance of their professional duties.

§ 2. Should the disciplinary court issue a resolution allowing for the judge to be held criminally liable for an intentional offence prosecuted by public indictment, the judge is suspended in the performance of their professional duties *ex officio*.

§ 3. The disciplinary court, when suspending a judge in the performance of their professional duties, reduces their remuneration by 25 to 50 percent for the period of the suspension; the foregoing does not apply to persons with respect to whom the proceedings for incapacitation were initiated.

§ 3a. If the disciplinary court issues a resolution authorising a retired judge to be held criminally responsible for an intentional crime prosecuted by public indictment, it will *ex officio* reduce the amount of his remuneration for the duration of the disciplinary proceedings, by 25% to 50%.

§ 4. Should the disciplinary proceedings be discontinued or should the judge be acquitted, all components of the judge's remuneration or emoluments shall be adjusted to the full amount.

Article 130. § 1. If a judge is detained due to being caught in the act of committing an intentional offence, or if, due to the type of the act committed by the judge, the authority of the court or significant interests of the service require their immediate removal from the performance of professional duties, the president of the court or the Minister of Justice may order an immediate break in the performance of their professional duties until the disciplinary court issues a resolution, however, for a period not longer than one month.

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