



CCJE-BU(2020)1

Strasbourg, 29 January 2020

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 23 (2020):

**“The role of the Associations of Judges
in supporting the judicial independence”**

REPLY: POLAND

*Please in your answers do not send extracts of your legislation
but describe the situation in brief and concise manner.*

General

1. How many Associations of Judges (please note that they can have different names) exist in your country?
 - a) For judges of all jurisdictions and all court levels 3
The Association of Polish Lawyers (hereinafter: ZPP) associating persons practicing all legal professions, including judges of all types and levels of courts + associations for judges only:
Polish Judges Association "Iustitia" (hereinafter: Iustitia);
the Judges Association "Themis" (hereinafter: Themis).
 - b) For judges of certain jurisdictions only 3
Polish Association for Administrative Judges (hereinafter: OSSSA) - for administrative court judges;
Association of Family Judges In Poland (hereinafter: SSRwP), Association of Family Judges "Pro Familia" (hereinafter: SSRPF) - both for court judges with jurisdiction in family and related areas of law.
 - c) For judges of certain court levels only 2
Association of Supreme Court Judges at Retirement;
Association of Judges at Retirement of the Regional Court in Warsaw [for retired judges of regional and district courts in Warsaw].
 - d) Are there Associations of Judges on some other criteria (i.e. women judges) n/a
- Total number of all types of Associations of Judges 8

There are 5 types of judges associations in Poland:

- 1) associations open to all legal professionals, including judges;
- 2) associations for judges of courts of all levels and jurisdictions;
- 3) associations for judges of administrative courts;
- 4) associations for judges distinguished in terms of the subject matter of the cases they adjudicate - adjudicating in cases related to family and related law (guardianship and minors);
- 5) associations for retired judges.

Other objectives n/a

Membership

2. What are the requirements for membership in the Associations of Judges?

The requirements are laid down in the statutes of individual associations, in which categories of members are also distinguished (e.g. ordinary, extraordinary, supporting, honorary, etc.).

As regards the ordinary members (i.e. with voting rights and eligible for offices in the association):

The member must be a judge (which also includes a retired judge) and a Polish citizen; a person has to declare the intention to join.

- Exceptions:

a) The ZPP brings together persons practicing all legal professions, including retired judges and assessors (i.e. judges for a trial period).

b) Most associations provide for the participation of judges at retirement (e.g. OSSSA), and in particular do not exclude them from membership even if a member of the association leaves the profession of judge to another profession (see e.g. SSRwP, SSRPF); sometimes, in such a case a special resolution of the association's authorities (concerning the exclusion) is needed (see eg. Iustitia).

c) In the case of Themis, a foreign judge may also become an ordinary member.

d) In the case of both associations of family judges, ordinary members must additionally adjudicate in the departments dealing with family law and guardianship or issues of demoralization and criminal acts of minors, treatment of addicts (in the case of SSRPF - they can also be scientists in this field of law; the same criterion in the SSRwP case applies to extraordinary members),

e) In the case of OSSSA, an additional requirement is that the judge or assessor (i.e. judge for a trial period) should be a member of the administrative judiciary, now or in the past.

3. Are prosecutors members of the Associations of Judges?

Prosecutors are not members of Associations of Judges (unless as extraordinary members without the right to vote), but they can associate in their own associations, as well as - in contrast to judges - also in trade unions. As regards the prosecutor's office, there exist the following organisations:

- the Association of Prosecutors of the Republic of Poland (for prosecutors and deputy prosecutors; limited activity recently)

- Independent Association of Prosecutors "Ad Vocem" (for prosecutors and deputy prosecutors ["prosecutor's office assessors" i.e. prosecutors for a trial period])

- Association of Prosecutors "Lex Super Omnia" (for prosecutors, deputy prosecutors and retired prosecutors)

There are also trade unions in the prosecutor's office and courts (in the latter case, only for administrative staff of courts):

- The Trade Union of Prosecutors and Employees of the Public Prosecutor's Office of Poland (for prosecutors, deputy prosecutors and administrative staff of the prosecutor's office);
- The Trade Union of Justice System Workers (for staff of courts and prosecutor's offices);
- Inter-Enterprise Trade Union Organisation of NSZZ "Solidarność" of Employees of the Judiciary and Prosecutor's Office (part of NSZZ "Solidarity" trade union);
- Independent Self-Governing Trade Union (NSZZ) of Employees of the Justice System of the Republic of Poland (belonging to the OPZZ trade union central) (associating administrative staff of courts and prosecutors);
- The Trade Union of Justice System Workers of the Republic of Poland (for staff of courts and prosecutor's offices);
- KNSZZ "Ad Rem" (associating staff of the Ministry of Justice, of courts common and military courts as well as from common units of the prosecutor's office of all tiers, other public administration units, persons employed by other employers, in particular in administrative courts, as well as former employees of those units).

Administrative staff of courts may also associate in the following trade unions (of a regional nature):

- Independent Trade Union of the Court Staff of the Piotrków Region;
- Independent Trade Union of District Court Staff in Łódź city

Legal framework / objectives

4. Which is the legal framework of the Association of Judges? Are there specific legal regulations (law, by-laws) which deal with the Associations of Judges in your country?

A general guarantee of the possibility of association of judges results from Article 12 of the Polish Constitution ("The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, (...) societies, citizens' movements, other voluntary associations and foundations."). However, it should be remembered that the public activity of judges is subject to certain constitutional and statutory restrictions:

Pursuant to Article 178 (3) of the Polish Constitution: "**A judge shall not belong to a political party, a trade union** or perform public activities incompatible with the principles of independence of the courts and judges. Such a strict prohibition of conducting political activities results from the era of 1945-89, when some judges belonged to a totalitarian political party or trade unions that were its extensions, or followed strictly its guidelines.

At the statutory level, in the Act - Law on the structure of common courts, restrictions for members of judicial associations arise from Article 82(2) ("A judge should, when on and off service, guard the authority of the post of a judge and avoid everything that could prejudice the judge's authority or weaken the confidence in his impartiality.") as well as Article 86(2) of the Act ("A judge must not take up other jobs or gainful occupations that would interfere with the performance of the duties of a judge, weaken the confidence in his impartiality or prejudice the authority of the office of a judge.")

The source of restrictions in this respect for members of the Association of Judges is also the Collection of Principles of Professional Ethics of Judges - this is the resolution of the National Council of the Judiciary of Poland No. 16/2003 of 19 February 2003 (adopted on the basis of Article 3(1) item 3) of the Act on the National Council of the Judiciary); the Council also watches over its compliance and issues interpretations. In the event of failure to comply with its provisions, the judge may be subject to disciplinary responsibility, and his/her attitude to ethical principles is also taken into account when running for the post of judge (incl. promotion) (Article 57i of the Law on the structure of common courts).

The basic activity of Associations of Judges is based on their statutes, which shall be in the form of resolutions of these organisations. In the matters not covered by the statute, the provisions of the Act of 7 April 1989 - Law on Associations shall apply. Statutes must also meet the requirements of this Act. However, there are no specific provisions on judges' associations.

5. According to their statutes, what are the main objectives of the Associations of Judges? (please mark yes or no and indicate by "1", "2" and "3" the three most important objectives)
(data based on associations' statutes and practical operation)

Defending and fostering the independence of judges and the judiciary	<input checked="" type="radio"/> yes <input type="radio"/> no Yes, with regard to all associations consisting solely of judges
Defending and fostering the rule of law	<input checked="" type="radio"/> yes <input type="radio"/> no Often, though not always in this exact form, recorded in the statutes of associations.
Fighting for economic safeguards of judges	<input checked="" type="radio"/> yes <input type="radio"/> no Yes (see e.g. § 5(8) of the "Iustitia" statute)
Fighting for social and physical security of judges	<input checked="" type="radio"/> yes <input type="radio"/> no Yes, included in the statutes of some associations (e.g. § 5(5) of the "Iustitia" statute)
Contribution to the development of the law	<input checked="" type="radio"/> yes <input type="radio"/> no Yes (see e.g. § 5 (4) of the "Iustitia" statute, § 7 (9) of the SSRwP statute)
Training of judges	<input checked="" type="radio"/> yes <input type="radio"/> no Yes, understood as taking actions as to improve the legal knowledge of judges or conducting supportive training activities; included in the statutes of all main associations: Iustitia, Themis, ZPP, SSRwP, OSSSA and SSRPF.
Ethics and accountability of judges	<input checked="" type="radio"/> yes <input type="radio"/> no Yes, in the sense of: promoting compliance with ethical principles
Involvement in judicial self-government, especially influencing the election of officers of self-government	<input type="radio"/> yes <input checked="" type="radio"/> no
Media work	<input checked="" type="radio"/> yes <input type="radio"/> no Included in the statutes of most associations, it is also often implemented in practice.
Organising conferences	<input checked="" type="radio"/> yes <input type="radio"/> no
International contacts and networking	<input checked="" type="radio"/> yes <input type="radio"/> no
Other objectives (which) SSRwP: care for the authority of family judges, striving to strengthen and protect the family; SSRPF: striving to strengthen and protect the family with particular emphasis on its caring and educational function.	<input checked="" type="radio"/> yes <input type="radio"/> no

Support of individual judges

6. a) How do the Associations of Judges interact with individual judges?

Through information posted on their websites about all events taking place as part of the association's activities and by seeking to integrate the environment. The main purpose of the associations is to represent the professional and social interests of the judges, taking care of the authority of judges and their due position in society. In general, the associations usually do not cooperate with individual judges, limiting their activities to making global decisions during general meetings.

- b) Can judges get assistance from the Association (which kind)?

Yes. This includes, for example, representation in disciplinary proceedings and in matters related to ensuring appropriate working conditions and remuneration corresponding to the dignity of the office, supporting and assisting former judges and their families, as well as retired judges.

- c) Do the Associations of judges defend individual judges (against what)?

The associations declare in their statutes actions aimed to strengthen the independence of the courts and individual judges, as well as support and assistance to judges. They may provide support to judges and support their right to defense in disciplinary proceedings, after a positive decision of the respective associations' management boards. For example, in the years 2011-2012, Iustitia advocated its members for the payment of salaries that, contrary to the law, were not indexed. SSRPF declares striving to improve the conditions of jurisprudence. SSRwP declares undertaking activities for the integration of family judges.

7. If there is an infringement of the independence of a judge or of the judiciary, by what means do the Associations of Judges react?

They react through media appearances, statements published on websites, letters addressed to representatives of the legislative and executive authorities.

8. Is there any influence of the Associations of judges on appointment or promotion of judges?

No, associations do not formally have such rights. Whereas, in accordance with the Constitution of the Republic of Poland, the appointment and promotion of judges is the personal prerogative of the President of the Republic of Poland at the request of the National Council of the Judiciary, consisting of a majority of judges (15 out of 25 members + 2 supreme courts' presidents).

9. Is there any influence of the Associations of Judges in disciplinary procedures?

They may participate in disciplinary proceedings by seconding their members as defenders.

10. Is there any influence of the Associations of Judges on training?

In each of the judicial associations' statutes, the aim to improve the legal knowledge and qualifications of the members is included, and this is one of the most important elements of their work for the unity and integration of the environment and professional development of judges. In pursuit of this goal, associations disseminate information among their members about available trainings in other institutions and universities. They may also carry out their own supportive ventures, like training activities and conferences.

Resources

11. Are there membership fees?

As with any association, membership fees are always one of the main sources of financial resources for all judicial associations.

12. What other resources are available for the Associations of Judges?

The catalogue of financing sources for judicial associations results from the general principles for associations. On the basis of Article 42 (2 and 3) of the act - Law on Associations, an ordinary association obtains funds for its activities from: membership fees, donations, inheritances, bequests, income from the association's assets and public donations. The Association may receive subsidies on the terms set out in separate regulations.

The Article 34 of the Act of April 7, 1989 – Law on Associations, indicated that the association may conduct business activity in accordance with the general principles set out in separate regulations. However, there are additional restrictions in this respect. In particular, the income from the economic activity of the association must serve the implementation of its statutory objectives and cannot be allocated to its members. It cannot be freely disposed of.

Economic activity with profit-making purposes cannot be the statutory goal of the association, it can only be an additional activity as one of the sources of income used to achieve the statutory goals. Establishment of an association requires registration in the National Court Register. The association should have a separate bank account - for business-related purposes. Some judicial associations (e.g. Iustitia, cf. § 6 (5) of the statute) do not conduct business activity but may receive income from statutory activity (for example, paid trainings, conferences).

General principles regarding the sources of financing and the manner of using them are reflected in the statutes of judicial associations. For individual associations the resources available are as follows (*note: retired judges' associations statutes did not indicate any resources other than membership fees*):

- Iustitia

The Association's assets include: 1) *membership fees*, 2) donations, subsidies and bequests, 3) revenues from statutory activities, 4) acquired chattels and real estate.

- Themis:

The Association's assets are: 1. *membership fees*; 2. grants, donations, subsidies and bequests; 3. acquired chattels and real estate.

- OSSSA:

The Association's assets consist of: 1) *membership fees*, 2) donations, inheritances, subsidies and bequests, 3) revenues from statutory activities, 4) acquired real estate and chattels.

- SSRPF:

The assets of the Association are: 1) registration fees and *membership fees*, 2) subsidies, 3) bequests and donations, 4) proceeds from statutory activities, 5) acquired real estate and chattels.

- SSRwP:

The funds include: *membership fees*, subsidies, bequests and donations, revenues from statutory activities.

ZPP:

The financial means of the Association are: membership fees, subsidies, subventions, grants, donations, bequests, inheritance, revenues from statutory activity, income from business activity, benefits from public donation, part of the income tax transferred by natural persons, income from chattels and real estate owned by or in use by the Association.

The association may also conduct business activities in sizes to achieve its statutory goals,

The object of the Association's economic activity is: publishing, printing, mediation, arbitration.

Administration of the Associations of Judges

13. How are the governing bodies, the secretariat and officers of the Associations of Judges selected? What is their term of office?

Issues regarding the staffing of the secretariat and the selection of officers are not included in the statutes of the Associations, but at most in the respective regulations of the offices / secretariats. Thus, employees are not chosen by the general meeting, but by the person exercising authority over the secretariat.

As concerns the governing bodies in respective Associations:

Iustitia: term of office of the authorities: 3 years (joint term). The Management Board of the Association consists of ten members, among which are the President and Vice-President for Organisational Affairs and Vice-President for Financial Affairs.

In the event of the expiry of the mandate of a member or members of the Management Board during the term of office, the Management Board shall continue to operate; if as a result of the expiry of the mandates the number of members of the Management Board drops below six, the Management Board may not adopt resolutions, except for the resolution on convening the Meeting of Delegates.

The bodies are selected by the annual Meeting of Delegates (delegates choose local branches in such a way that the total number of delegates is about 150 people). The Meeting of Delegates elects the President in a separate vote and the other nine members of the Management Board in a separate vote. Every year, in the absence of discharge, the term of office of individual members may be shortened.

OSSSA, SSRPF: the term of office of the authorities is 3 years; they are elected by the General Assembly / Congress of Association Members. Every year, in the absence of discharge, the term of office of individual members may be shortened.

SSRwP, Themis, ZPP: the term of office is 4 years, elected by the General Assembly / Assembly of Members (in the case of ZPP: National Congress of Delegates).

14. Are there restrictions as regards the number of terms of office for members of the governing bodies of the Associations of Judges, and if yes, how many terms and for how long?

The statutes of judges' associations generally do not provide for any restrictions in this respect. The only exceptions (with regard to the 'Iustitia' and 'Themis' associations) relate to the position of president, who can only be elected for two consecutive terms.

15. Are there restrictions to become an officer of an Association of Judges?

These types of restrictions are usually not included in the statute. Substantive requirements for administrative staff of secretariats may be included in the regulations of the offices / secretariats. Associations usually do not have officers, excluding service staff.

The only restrictions sometimes apply not with regard to staff of associations, but to membership in governing / supervisory bodies. For example, it is not possible to combine functions in various bodies, e.g. in the management board and audit committee (Iustitia, Themis, OSSSA, SSRPF).

In addition, in the case of 'Iustitia' (cf. § 17 (3) of the statute) members of the Audit Committee may not remain in marriage, cohabitation, kinship, affinity or service subordination with the members of the Management Board. Also, functions in the Management Board or Audit Commission of "Iustitia" cannot be combined with administrative functions in the Ministry of Justice.

Interactions with state institutions and political parties

16. How do the Associations of Judges interact with the parliament?

Are Associations of Judges involved in the process of law-making?

If yes, how (is this formal or informal)?

The statutes of most of the Associations of Judges (e.g. Iustitia, Themis, SSRwP, SSRPF, OSSSA) provide for the possibility to cooperate with the legislative authority in the legislative process to achieve the objectives of the association. A significant part of the activities of the associations is to provide opinions on draft legal acts sent for consultation by the Sejm (parliament).

The interactions are of an informal nature, i.e. not provided for in the law as a requirement. Judicial associations, like any stakeholder, may, however, present their non-binding opinions on given legal acts (concerning the system and financing of the judiciary as well as status of a judge) to the Sejm, and they practice that, indeed. It happens that the representatives of the associations participate in meetings of parliamentary committees, if they express their willingness and receive an invitation, as well as in the procedure before the Constitutional Tribunal in matters concerning legal regulations related to the position of a judge.

17. How do the Associations of Judges interact with the government, especially with the ministry of justice?

The statutes of most judicial associations provide for the possibility to cooperate with the executive to achieve the objectives of the association.

Interactions are informal as such, i.e. not required by the law. Associations of Judges, like any stakeholder, may, on the other hand, present to the government or publish in the media their opinions on given draft legislation, which are non-binding in nature. Consultative meetings of association representatives with government representatives may also take place. Representatives of the Ministry of Justice are also invited to sporting, recreational and cultural events of national range organised by associations, for prestigious purposes, e.g. as funders of cups/trophies.

18. a) How do the Associations of Judges interact with political parties?

From a formal point of view, relations of this type are not allowed, as follows from Article 178(3) of the Constitution of the Republic of Poland, although at present, there is a highly questionable (in the light of this provision) participation (e.g. of some members of Iustitia or

Themis associations) in demonstrations organised by opposition political parties and/or organisations.

b) Are certain Associations of Judges connected with certain political parties?

Formally, none of the Association of Judges has links to any of the political parties. Practice in some cases indicates that this type of relationship or interaction of an informal nature cannot be excluded. Currently, some members of the Iustitia and Themis associations, through their public appearances with members of opposition parties, suggest a possibility of existence of this type of cooperation.

c) Is there an influence of party politics within the Associations of Judges?

Formally, such an influence should not exist, although it cannot be excluded that it exists. In the statements of the leaders of the associations, a negative attitude to all solutions proposed by the currently ruling political party is noticeable.

19. a) How do the Associations of Judges interact with the Council for the Judiciary?

The statutes of most judicial associations (e.g. OSSSA, Iustitia, Themis, SSRPF) provide for the possibility to cooperate with the National Council of the Judiciary to achieve the objectives of the association.

Interactions are in principle informal. Judicial associations, like any stakeholder, may, on the other hand, present their opinions to the Council, in the form of resolutions, on the legal acts concerned or other matters concerning judges. Consultative meetings of association representatives with representatives of the Council may also take place. In the course of preparing the budget of the judiciary for the following year, it happens that the Council's budgetary committee consults the representatives of associations or trade unions, in particular those bringing together the administrative staff of justice system.

b) What is the role, if any, of the Associations of Judges in the selection of members of the Council for the Judiciary and/or presidents of courts and judges (please describe)?

So far, the Associations of Judges have not had any formal influence on the selection of members of the National Council of the Judiciary. However, it is not infrequent that members of such associations become members of the Council. According to the current legal regulations, members of Associations may actively participate in the procedure of selecting candidates for members of the National Council of the Judiciary by signing a list of support for the candidates for members of the NCJ of their choice. In this way, each judge has an open path to democratic and transparent participation in the procedure of selecting Council members.

20. How do the Associations of Judges interact with the court administration and what, if any, are the problems in these relations?

The associations adopt resolutions with appeals addressed to the judicial administration. A possible interaction may also be the events of an educational, cultural or recreational nature when the judicial administration plays the role of the party organising or supporting the event.

Interactions with other organisations

21. a) If there is more than one Association of Judges, how do they interact with each other?

There is no formal order or prohibition of cooperation. It takes place primarily at the level of educational, cultural or recreational activities.

In selected matters of common interest or regarding the entire judicial environment, associations may act together (all or some of them), organising joint conferences and adopting resolutions.

b) If there is more than one Association of Judges, how other stakeholders deal with this fact?

Membership in individual associations is not mutually exclusive, provided of course that the formal requirements arising from the given statute are met.

22. How do the Associations of Judges interact with NGOs?

This issue is not regulated in detail and, if it occurs, it is usually informal and in the form of committees, agreements and judges' cooperation forums. Recently, it has been manifested in cooperation with organisations such as the Committee for the Defence of Democracy - in the form of participation in rallies (with the opposition politicians also participating), or making joint statements and appeals.

23. How do the Associations of Judges interact with foreign or international organisations?

Associations of judges cooperate with foreign or international organisations, most often in the framework of various associations and networks - through membership or cooperation. The statutes of all judicial associations explicitly provide for this possibility. Polish associations operate internationally, among others as members of the International Association of Judges (IAJ), the European Association of Judges (EAJ) and MEDEL magistrates' association.

Associations may also send their positions or statements to other foreign entities - primarily to foreign universities, organisations or international institutions (including EU), regardless of whether they formally or permanently cooperate with them.

24. Is there a trade union, in which judges can be members? If so, what are the relations between this trade union and the association of judges?

In accordance with Article 178(3) of the Polish Constitution, a judge may not belong to a trade union. Despite this, the actions of some of the associations raise doubts, among a number of lawyers, as to whether they do not take the forms of action characteristic of trade unions and whether the constitutional prohibition is not circumvented in this way.

This issue was pointed out by the former President of the Constitutional Tribunal in Poland, Prof. Andrzej Rzepliński, who defined the actual form of activity one of the associations as a trade union. He stated that "...the 'Iustitia' association is unreliable itself, because it violates the Constitution. It is *de facto* a trade union, and the Constitution forbids judges to create and join trade unions (...)" (cf. interview for *Gazeta Wyborcza* of 12.12.2012).

Ethical standards

25. Is there any influence of the Associations of Judges in establishing ethical standards?

Associations of Judges have no formal influence in establishing ethical standards. Pursuant to Article 3(1) item 3) of the Act on the National Council of the Judiciary, the Collection of Principles of Judges' Professional Ethics shall be adopted by the National Council of the Judiciary; it also supervises its observance and interprets it if necessary.

26. Do the Associations of judges contribute to a further improvement of the justice system?
How?

In their statutes, the Associations declare actions aimed at improvement of the functioning of the justice system. This has been usually manifested in educational activities (conferences, lectures, seminars or trainings).

Perception

27. How does the public at large see the Associations of Judges?

So far, there have been no opinion polls conducted on the evaluation of the activities of Associations of Judges. This issue has not been investigated even in the framework of studies devoted exclusively to the evaluation of the functioning of the judiciary. This may suggest that, at least until recently, the activities of associations have not been in orbit of public interest at all. This state of affairs seems to have recently undergone some changes, with adverse side effects. In view of the rather fierce interactions of some associations with, for example, the government, their activities in certain dimensions are sometimes framed by political conflict, which affects the assessment of the judge as being involved in a political conflict, and is perceived negatively by society. On the other hand, such activity may be perceived positively by the supporters of one political option, also negating the criticised solution, and negatively by the supporters of another option. Similarly, the public appearance of representatives of judicial associations together with members or officials of political parties, in the context of the prohibition of conducting political activity by judges in Poland, is subject to criticism. Criticism or support for such activities of associations takes place primarily in social media. There are also demonstrations aimed at support or criticism (although rarely addressed directly to specific associations).