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Towards Justice: Roadmap for Reforming Judicial Selection in Poland

Authored by Bartosz Pilitowski
In collaboration with Paulina Karlińska
Toruń 2023

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Introduction

The judiciary cannot function without judges whose personal qualities and competence guarantee fair, impartial and efficient adjudication of the cases entrusted to them. It is in the interest of both citizens and the candidates themselves that competitions for judicial positions are conducted in a transparent, fair and merit-based manner. There should also be no doubt that judges are appointed through a process that complies with legal norms and international standards. We believe that the way to realize this vision of a fairer system of judicial selection is to implement selection standards based on scientifically proven methods of evaluating candidates and to entrust this task to

a specialized institution, the National Commission for Judicial Selection. The “Roadmap for Reforming Judicial Selection System” presented in this publication is the result of studies of judicial selection processes in various countries. As a result of these analyses, we considered the reform process of the Dutch judicial selection system to be particularly worth following. The motivation for the research was the need to reform the judicial selection process in Poland. However, the scheme of action presented in the Roadmap is universal and may be an inspiration or help for other countries that wish to make an effort to transition to a merit-based system of judicial selection.



Prologue

Adam and Mark are two colleagues who met at university and became friends while working together in one of the capital's law firms. However, due to family reasons, they decided to move back to their hometowns at the same time. As both lawyers specialized in public law, they were interested in competitions for the position of legal counsel in large legal departments of regional administrations. They met all the formal requirements and the tasks described in the advertisements corresponded to their knowledge and professional experience. The move from the private to the public sector seemed risky, the work somewhat less lucrative, but they were both motivated by local patriotism and the opportunity to work in line with their vocation. So they agreed to exchange information about the results of the competitions.

Mark was the first to call:

- Hi Adam, how's life? How did the competition go for you?
- Well, not good. Sorry for not calling. It felt a bit awkward, you know.
- Yes? Unnecessarily! I lost too, but that's okay. I'll prepare better next time. What did you run out of points on?
- Points? What points? I can only guess why I lost. You see, they picked a guy who worked there while he was in law

school. He had three times less experience than me, and he had gained it exclusively in that office. The formal requirements were met, but why they thought he was more qualified than me, I have no idea. I think they just knew him and didn't know me.

- Well, isn't the competition committee supposed to be independent?

- It might have been. No one from the department he worked in was on it. But the committee used the recommendation of the management of the legal department. The candidate who won had 100% of the votes in his favor, and the others, including me, had zero votes. Why? I can only guess.

- What do you mean? Didn't you get an explanation of the decision?

- I did, but I have the impression that it is written pro forma. Let me give you an example. When I was wondering what documents to include in my application, I looked at the results of previous competitions for the same position. One of them justified the selection of the candidate by stating, among other things, that working at the university was a good indication of his level of expertise and would guarantee his professional development. So I naively boasted that I had a Ph.D. and was teaching part-time at our university. Do you know what they wrote to justify



my decision? That working at the university would distract me from my duties in the office.

- Oh gosh, that means it's hard to tell what they expected from the candidates.

- Exactly. And there was no opportunity to ask because the committee did not meet with any of the candidates. Such an interview would make sense. After all, the position requires representing the office in court and other situations that require effective communication or poise. How do you know if someone can do that just by looking at a resume?

- I hear you are very angry. If the job meant so much to you, why don't you try again?

- Mark, never in my life! If this place works like that, I don't want to work there. If I got in, I would not know why. I would guess it's just because there was no one willing among the current staff. Besides, you know how it is. Opaque hiring policies are a red flag. They are likely to be backed up by equally opaque promotion or job-sharing policies. I value my skills, so I prefer to look for a job where they are fairly valued. What about your experience?

- I didn't win the competition either, but I have a completely different impression. It turns out that the office I applied to has a job profile with a list of competencies expected of candidates for each position. During the recruitment process, each of these competencies is evaluated or assessed. Along with the decision,

I received information about what my strengths were and which competencies from the profile of the position I applied for I could still work on.

- But wait, wait. How did they know who was more competent? Did they compare college grades and years of experience?

- No, the degree and minimum experience were only formal requirements. More qualitative methods were used to assess the competencies. You just said that a legal counsel should be able to communicate clearly and remain calm in stressful situations. These were among the many competencies that were assessed during a one-day assessment center. It was conducted by hired specialists who gave us various tasks, tests and interviews that were thematically very loosely related to the job. The only task of a substantive nature that I can remember was having to sort dozens of letters in 15 minutes in order of urgency.

- Ha, ha, ha, well, I already know why you failed! This test will expose any perfectionist!

- Well, you know me all too well, Adam. I came out of that assignment so terribly irritated because I couldn't read every letter carefully and put them in the right order. However, I got a clear feedback that in this office there are sometimes situations where you have to deal with a sudden influx of a huge number of cases and the most important thing is not to miss the most urgent ones. So this is something I definitely need to work on.



- So are you going to run again?
- For sure. But maybe if I'll run for the coordinator position next time.
- But what do you mean? Do you want to ignore the promotion ladder? I don't think it works that way in the office I applied to. You have to work your way up from a lower position to earn a promotion.
- Can you imagine? After receiving the decision, one of the committee members spoke with me to explain the reasons for the decision. In a nutshell, the position I was applying for requires people who, in addition to legal competence, are able to handle a large volume of repetitive matters very efficiently, while being vigilant enough not to overlook urgent or attention-demanding matters. Despite several advantages over my competitors, perfectionism disqualified me from this role. Instead, my interviewer suggested that my skills were better suited to a more senior position in their legal department. The focus there is on quality control of the lawyers' work and supporting them in the appeals process.
- It seems that having more experience is not enough to be a good coordinator. Each of these positions requires slightly different personality traits and skills.
- Yes, and that's why it would be unwise to move the best counsels to coordinator positions, because the office would lose the best people in one area, but have no guarantee that it would gain good people in another. It is much wiser to hold an open, fair, and objective competition. Only such a competition has a chance of attracting a wide range of candidates and selecting the person with the skills best suited to the needs of the position.
- In retrospect, I understand why so few people entered the competition for my office. I won't be tempted again.
- From what you say, the level of the competition you were offered not only did not encourage participation. Nor did it create the conditions for selecting the optimal candidate, despite the good intentions of the competition committee.
- The example of the office where you applied shows that it can be done better. I hope that in my region, too, the administration will be mature enough to entrust its recruitment processes to professionals, based on the skills needed for the job. Maybe then I will change my mind and consider the possibility of moving to the public sector.

Why we need a reform of competitions for judicial vacancies in Poland

Competitions for vacant judicial positions are the primary route to the judiciary in Poland and the only way for judges to advance within the structures of the Polish judiciary. Despite the re-establishment of a route into the judiciary for those without professional experience through judicial education and training, open competitions for vacant judgeships still account for the majority of appointments to district judgeships.

In 2022, the National Council of the Judiciary submitted applications for the appointment of 348 persons as district court judges, of whom 67 were assessors and 281 were selected by competition. (An assessor is a judicial officer with no prior professional experience who is appointed to a district court for a 4-year term to demonstrate his or her abilities after graduating from a school for judges. After 3 years of judicial service, the assessor undergoes an evaluation by

Table 1. Number of competition proceedings for vacant judge or assessor posts opened in 2019-2022, broken down by the type of court in which there was a vacancy or vacancies to be filled.

	2022	2021	2020	2019	mean
Supreme Court	2	12	0	1	4
Supreme Administrative Court	3	3	6	0	3
voivodship administrative courts – position of a judge	2	9	15	2	7
voivodship administrative courts – position of an assessor	25	16	22	9	18
military district courts	0	0	1	0	0
military garrison courts	3	0	0	3	2
courts of appeal	32	59	40	18	37
district courts	156	231	154	67	152
district courts	157	170	53	89	117
total	380	500	291	189	340

Source: own compilation based on information on the activities of the National Council of the Judiciary



experienced judges and may apply to the National Council of the Judiciary for conversion of his position into a permanent position of district judge). A total of 580 persons have been selected through a competition and have submitted an application for appointment as a judge or assessor in courts of different levels and types in 2022. Between 2013 and 2022, the average number of persons selected for appointment to a judicial position through a competition conducted by the National Council of the Judiciary was 408 per year.

The number of competition proceedings is not decreasing either. Over the past four years, the NCJ has opened 1,360 competitions, an average of 340 per year. Of these, in at least 117 cases per year, the NCJ must make the extremely responsible decision to entrust the lifetime power and dignity of a judge to someone who has not had the opportunity to prove themselves in that role.

According to research and public statements by its members, the National Council of the Judiciary lacks the resources to make fully informed decisions¹. Processing thousands of applications is just one

of the many duties of the Council, whose primary mission is to uphold the independence of the courts and the independence of judges. The Council is an advisory body on legislative and personnel matters affecting the judiciary. It is one of the few institutions that has the power to refer requests for the examination of legal acts to the Constitutional Court. Although the Constitution states that the President appoints judges at the request of the NCJ, it does not say anything about the Council's obligation to conduct competitions. Nevertheless, the Council has traditionally been entrusted with this task. However, at the time when the composition of the National Council of the Judiciary was established, the Polish judiciary was several times smaller, and therefore the number of cases was also smaller. Since the number of proceedings reaches several hundred a year and the number of candidates to be evaluated often exceeds a thousand, it has become unrealistic for the Council itself to conduct competitions in a reliable manner.

An analysis of the 2014-2017 competitions shows that the Council, which is largely elected by the judges, relies

1 Ł. Bojarski, *Fabryka sędziów bez kontroli jakości* [Eng. *Factory of judges without quality control*], 'Prawnik. Dziennik Gazeta Prawna' 21 February 2017, D6-D7; K. Pawłowicz, *Jak KRS wybiera kandydatów na sędziów?* [Eng. *How does the NCJ select candidates for judges?*], 'WPolityce.pl' 1 July 2016, <http://wpolityce.pl/czytelniczy/logowanie?next=/polityka/299065-jak-krs-wybiera-kandydatow-na-sedziow-nie-%0Aamamy-zadnej-wiedzy-o-tym-kim-naprawde-od-strony-tzw-ludzkiej-osobowosciowej-moralnej> [accessed 20.10.2020].

overwhelmingly on the recommendations of the judges' self-governing bodies². An analysis of a sample of competitions held in 2018, that is, after the majority of members had been elected by Parliament, showed that the previous problems had only worsened. Moreover, after the elimination of the participation of the Supreme Court in the competitions for positions in this court, the new members, deprived of the assessments and opinions prepared by the court, made mistakes even of a formal nature, probably because they themselves were not able to analyse all the documents reliably.³

The system of selection of judges through competitions was also negatively evaluated by its addressees. As we read in the Report on the Activities of the National Council of the Judiciary in 2013, a survey conducted by CBOS on behalf of the Council among lawyers, legal advisors and public prosecutors showed that almost 57% of the respondents negatively assessed the system that allows the appointment to judicial positions of persons without due

and verifiable judicial experience. Differences in preparation for the profession between judges who had previously served as assessors and those appointed without such experience - to the detriment of the latter - were perceived by 52.1% of respondents. For the respondents, the qualities that made a difference between those who performed well and those who performed poorly in the role of judge seemed to be practical skills, organization of hearings, ease and ability⁴.

The Council has therefore endeavoured to make it possible once again to test these skills in future judges during an assessorship. Thanks to the consistent action of successive governments and parliamentary majorities, the practice of appointing judges with no professional experience for a limited period of time before granting them a permanent status has been re-established in Poland. However, as long as the possibility of appointment to the position of a judge for life remains open to experienced lawyers and academics, the possession of the

2 B. Pilitowski, M. Hoffman, B. Kociotowicz-Wisniewska, *Skąd biorą się sędziowie? vol. 1 (2014-2017)*, Court Watch Poland Foundation, Toruń 2017, https://courtwatch.pl/wp-content/uploads/FCWP_Skad_biora_sie_sedziowie_vol_1.pdf [accessed 26.11.2023].

3 B. Pilitowski, B. Kociotowicz-Wisniewska, *Skąd biorą się sędziowie? vol. 2 (rok 2018)*, Court Watch Poland Foundation, Toruń 2019, https://courtwatch.pl/wp-content/uploads/FCWP_Skad_biora_sie_sedziowie_vol_2.pdf [accessed 26.11.2023].

4 *Informacja z działalności Krajowej Rady Sądownictwa w 2013 roku* [Eng. *National Council of the Judiciary Annual Report 2013*], National Council of the Judiciary, Warsaw 2014, p. 17, <https://krspl.home.pl/admin/files/sprawozdania/krs%20informacja%20z%20dzialalnosci%20za%202013.pdf> [accessed 1.12.2023].

above-mentioned competencies or the predisposition to acquire them should be checked already at the competition stage. This has not yet been done. Thus, despite the introduction of training and assessment, the risk that people who are unsuitable for the role will continue to become judges has not been eliminated.

Surveys conducted between 2014 and 2016 by the European Network of Councils for the Judiciary among judges, i.e. those who had already been appointed, showed that they had even less confidence in promotion procedures than in competitions for district courts. This is despite the fact that judges in Poland face virtually no competition from candidates from other professions.⁵ Only

of the Polish judges participating in this study expressed confidence that the promotion process for judges in Poland is based on merit. In comparison, in the Netherlands the confidence rate was twice as high and four times fewer judges signalled a lack of confidence⁶.

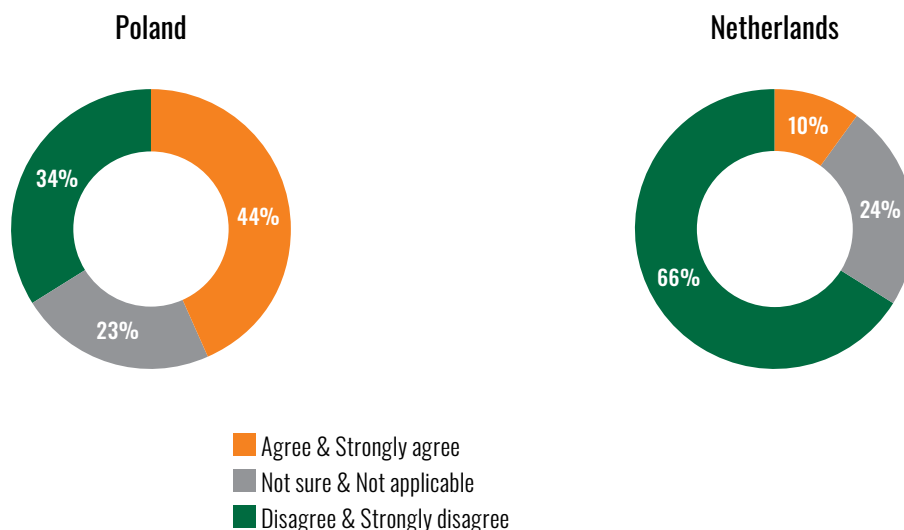
Even before the allegations of the NCJ's lack of independence began, the way in which judges are selected in Poland suffered from serious problems that led to a lack of confidence on the part of the main stakeholders themselves, i.e. potential candidates. Lawyers who have an alternative to working in the judiciary, i.e. the most talented representatives of academia and the legal profession, will not want to participate in competitions that do not guarantee fair and equal conditions. Therefore, it's worth investing in the objectivity of competitions in order to attract more talents with experience in work outside of the courts. A prerequisite for this is a recruitment system that evaluates candidates on the basis of the required competencies and abilities rather than on former achievements. People with the right aptitude and vocation will consider applying to be judges, even if it is a less lucrative job, because of the intangible benefits it brings. However, they must be confident that their competence will be fairly assessed⁷.

⁵ In a random sample of 100 resolutions for the appointment of a judge or judges to the district court from 2014 to 2017, we did not come across a single case where a candidate who was not a district court judge was appointed. Of all the competitions for the post of a judge of the court of appeal from this period, only in one case was the winner a person who was not a judge. Source: B. Pilitowski et. al., *Skąd biorą się sędziowie?* vol. 1 (2014-2017), op. cit.

⁶ ENCJ, Data ENCJ Survey on the Independence of Judges 2016-2017, European Network of Councils for the Judiciary, https://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_survey_2016_2017.pdf [accessed 30.10.2022].

⁷ D. Turek, A. Wojtczak-Turek, A. Horodecka, *Wybrane determinanty wpływu poczucia sprawiedliwości na postawy i zachowania pracowników w organizacji* [Eng. *Selected determinants of the impact of a sense of justice on employees' attitudes and behaviour in organisations*], „Organizacja i kierowanie” [Eng. “Organisation and Management”], 2014/3 (163), pp. 114-140.

Graph 1. Distribution of judges' responses to the question "Do you agree with the statement that in the last 2 years judges in my country have been promoted solely on the basis of merit and experience?"



Source: own compilation based on "Data ENCJ Survey on the Independence of Judges 2016-2017".

Therefore, the common benefit of introducing a substantive and impartial system of competition for judicial vacancies may be to attract more and better candidates to work in the courts.

After 6 years of research on the issue of selection and promotion of judges in Poland, we believe that the diagnosed problems can be solved [1] by basing the competitions on an open competence profile of a judge, [2] by implementing recruitment and selection methods based on scientific research, and [3] by entrusting the recruitment and selection of judges to a specialized body. However, the successful implementation of such changes requires extensive preparation and consultation with a wide range of

stakeholders. We have therefore developed a "Roadmap for Reforming Judicial Selection System". The process was inspired by the reform of the judicial selection system in the Kingdom of the Netherlands, which resulted in the establishment of a National Commission for the Selection of Judges and the basing of the selection process on tools of scientifically proven validity. Because of cultural differences, the Dutch solutions cannot be "copy-pasted" to other countries. However, we believe that by following the roadmap it will be possible to "tailor" an equally effective system to the needs and conditions of different societies and justice systems.

Characteristics of modern recruitment and selection systems

The acquisition of new people for an organization can be divided into two stages: recruitment and selection. Recruitment is the set of activities aimed at getting people willing to work. Selection is the process of consciously selecting the right people from among those who are willing to work. The process of recruitment and subsequent selection depends not only on the structure, size and nature of the organization, but also on the nature of the position to be filled. More precisely, it is the process of finding the right employee on the labour market. For the employer, it is the stage of deciding which of the candidates is the most suitable. This process can be very different, it can be a short one, limited to the examination or careful reading of the application documents and on this basis accepting the person for the job, or it can be a longer one, including an interview and other techniques to identify the best, i.e. the most competent and motivated people.

More than 100 years of empirical research and documented experience of organizations clearly show that the best results are achieved by employee selection processes that are characterized by objectivity, reliability and relevance rather than discretion. The main objective of conducting recruitment and selection processes in organizations with long-term human resources planning is to select candidates with the highest competencies, motivation and aptitude for further development.

Piotr Prokopowicz, a sociologist and organizational psychologist at the Jagiellonian University, described the history of the development of recruitment and selection practices and drew attention to a paradox that is common to organizations in all sectors: private, public and non-governmental. More resources and effort are spent on the development and training of existing employees than on recruitment and selection processes⁸. Meanwhile, according to Laszlo

8 P. Prokopowicz, *Rekrutacja i selekcja oparta na dowodach, 33 zasady skutecznej doboru pracowników* [Eng. *Evidence-based recruitment and selection, 33 principles of effective employee selection*], Wolters Kluwer SA, Warsaw 2016.

Bock, former HR director at Google, it is a far more effective use of financial outlay to invest in recruiting and selecting the right people for the job⁹.

Employers in the private sector are increasingly consciously looking for people who are competent and motivated to perform specific roles in the organization, and it is these aspects that are given the greatest emphasis in the recruitment process. In addition, these changes are due to the spread of knowledge about methods and the availability of selection services based on competency measurement. Competence is a set of knowledge, skills, and attitudes that guide behaviour to ensure success in a job. Competencies do not depend on specialized knowledge or experience in the target job. They can be used in a variety of situations and positions.

According to an analysis of 50 million job postings published in the US between 2017 and 2020, private organizations are increasingly abandoning formal

education requirements in favour of testing candidates' competencies. This is happening even for mid- to high-level positions¹⁰. A 2022 survey of members of the world's largest association of HR professionals found that more than half of U.S. employers already use competency assessments before hiring, and 78% of HR professionals believe the introduction of standardized competency and aptitude assessments has improved their hiring decisions¹¹.

For years, empirical research has been conducted on the effectiveness of hiring based on standardized assessments of skills and aptitudes, demonstrating the benefits of such an approach to employee selection. Piotr Prokopowicz lists some of the benefits proven by scientific research: increased productivity, increased trust within the organization, increased employee motivation, and reduced employee turnover¹². As an example of the measurable effect of replacing traditional methods with a standardized measure of competence,

9 L. Bock, *Work Rules! Insights from Inside Google that Will Transform how You Live and Lead*, Twelve, New York 2015.

10 J.B. Fuller et al., *Skills-Based Hiring Is on the Rise*, Harvard Business Review, 2022-02-11, <https://hbr.org/2022/02/skills-based-hiring-is-on-the-rise> [accessed 1.12.2023].

11 R. Maurer, *Using Skills Assessments Over Education, Experience Requirements*, Society for Human Resource Management, 2022-08-31, <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/using-skills-assessments-over-education-experience-requirements.aspx> [accessed 30.11.2023].

12 P. Prokopowicz, *Rekrutacja i selekcja oparta na dowodach...*, pp. 25-26.

he cites the replacement in the U.S. federal government of selection based on an analysis of experience and education with tests of cognitive ability. A study commissioned by the U.S. Department of Labor found that employees hired using the latter method were on average 10 percent more productive, saving the federal budget hundreds of millions of dollars¹³. In January 2023, the U.S. House of Representatives passed a bill that limits the use of education in determining whether someone is qualified for a civil service job, in favour of evaluating candidates based on skills and competencies¹⁴. Similar local regulations have been enacted in Virginia, Alaska, Maryland, Pennsylvania, and Utah¹⁵.

Preparation of the recruitment and selection process

Selection is the process of gathering information about employee candidates and selecting the most appropriate one for the position to be filled. In practice, this means looking for a candidate who may best match the competency profile developed for the job¹⁶. Finding the right candidate to fill a position is a difficult task that requires commitment, time and financial investment. It is therefore becoming the norm to hire specialists to carry out the recruitment process, especially for positions of high complexity or with a high level of responsibility. Regardless of who is responsible for carrying out the recruitment process, it should include certain invariable elements.

Effective recruitment is based on properly describing the job and identifying the expectations of the people who will work in the role. Next, it is necessary to answer the question of what employee

¹³ The research report commissioned by the U.S. government from which this data is drawn is available online: <https://files.eric.ed.gov/fulltext/ED310170.pdf> [accessed 30.11.2023].

¹⁴ U.S. Congress, *Chance to Compete Act of 2023*. H.R. 159th 118th Cong., 1st sess., 2023.01.25, <https://www.govinfo.gov/app/details/BILLS-118hr159rfs> [accessed 3.12.2023].

¹⁵ R. Maurer, *Virginia Drops Degree Requirements for Most State Jobs*, Society for Human Resource Management, <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/virginia-drops-degree-requirements-most-state-jobs.aspx> [accessed 30.11.2023].

¹⁶ A. Pocztowski, A. Rakowska, A. Sitek-Lutek, *Zarządzanie zasobami ludzkimi w Polsce* [Eng. *Managing human resources in Poland*], Wolter Kluwer, Warszawa 2021.

characteristics determine success in meeting these expectations, i.e. to develop a competency profile of the candidate. Knowing what competencies we are looking for, it is possible to select or develop tools for the selection process that evaluate competencies or dispositions that determine their attainment, and then with their help it is possible to conduct processes of selecting people for employment in a given position. In case of

repetition, it is reasonable to carry out an evaluation of the adopted procedure by measuring the performance of individual employees and verifying which qualities known at the recruitment stage correlate most with subsequent results. The fairness of the process in the eyes of the candidates should also be an important evaluation criterion.

Candidate selection criteria

In order to assess candidates, it is necessary to first define selection criteria, i.e. criteria for selecting persons for employment, which are closely related to the set of expected competencies prepared for assessment and testing. Selection criteria should be understood as those qualities, abilities and dispositions of the candidate that allow us to assess the extent to which the candidate meets the requirements of the job. The most common distinction in the literature is between formal and qualitative

criteria¹⁷. Formal criteria take the form of documented characteristics (e.g., age as evidenced by an identity card) or achievements (e.g., education as evidenced by a degree) that are intended to demonstrate qualifications for the job. Qualitative criteria are more specific about what is expected of a candidate and may include a broad catalogue of competencies, psycho-physical characteristics, or personality traits.

¹⁷ M. Suchar, *Rekrutacja i selekcja personelu* [Eng. *Personel Recruitment and Selection*], C.H.Beck, Warsaw 2017.

Competencies are behaviors, determined by knowledge, skills, and motivation, that lead to the performance of tasks as expected. In

order for a person to exhibit the desired behavior that leads to the achievement of a specific outcome, he or she must know how to behave, be able to take appropriate action, and be willing to behave in a certain way. We speak of competence when all of the above components are in place to produce the specific behavior. Competences are:

- **observable and measurable** because they are manifested in behavior;
- **versatile** (we can use them even when we change jobs or positions, use them for different tasks);
- **dynamic**, i.e. they are subject to a learning process, and the degree and pace of competence development depends on relatively permanent predispositions (personality, intelligence, etc.).¹⁸.

The above-mentioned studies show that using formal criteria alone is less successful in matching employees than testing their competencies or aptitudes through standardized assessments. They make it possible to predict how a candidate will fulfil his or her role and responsibilities in a given position. This approach is also cost effective from an employee development perspective, as it provides clear feedback on a candidate's strengths and areas for improvement following a recruitment and selection process.

¹⁸ P. Jurek, "Analiza wybranych metod oceny kompetencji zawodowych" [Eng. Analysis of selected methods of professional competence assessment], in: A. Witkowski, T. Listwan (ed.), *Kompetencje a sukces zarządzania organizacją*, Difin Publishing House, Warszawa 2008.

Competence model and competence profile

In order to conduct a professional and effective recruitment process, it is necessary to prepare (develop and implement) a competency model, i.e. a catalogue of knowledge, skills and attitudes that are expected of an employee in a given position in a given organization and that condition its success. In other words, it is a guide for any organization and its employees to answer the question “What competencies do we expect from employees in our organization? Each competency has a definition and its level is described by key behaviours. These are the behaviours that can be observed in the workplace and are necessary for effective performance¹⁹.

A candidate profile is a document that answers the question of what kind of person we are looking for to fill a particular position. We expect the candidate to have certain characteristics, which we call expected characteristics, divided into key groups including qualifications, competencies, and aptitudes. Expected traits can be divided into **required traits** (those that are necessary to perform effectively in the position) and **desirable traits** (those that increase the likelihood that the job will be performed exceptionally well). In the case of required traits, it is important to determine what level (intensity of the trait) is necessary for the position.

Description of selected selection methods

Cognitive ability tests

Cognitive ability tests belong to a larger group of psychometric tests. Such tests require professional preparation and

analysis, so the people who can administer and interpret them are psychologists. Cognitive ability tests are designed

¹⁹ An example of such a ‘guide’ to organizationally relevant competencies and their definitions is *UN Competency Development - A Practical Guide*, produced in 2010 by the UN Office of Human Resource Management, https://hr.un.org/sites/hr.un.org/files/Un_competency_development_guide.pdf [accessed 29.11.2023].

to scientifically examine certain psychological characteristics of a candidate, e.g. personality, intelligence, motivation.

The method of measuring the level of intellectual competence through the use of *general mental ability* (GMA) tests is one of the most effective methods of predicting future job performance, especially for jobs that require decision-making and analytical work²⁰. These tests measure a candidate's ability to comprehend verbal information, to perceive and process numerical and graphical information, to creatively search for solutions to problems, and to use logical analysis to infer relevant information. The great advantage of general cognitive ability tests, in addition to their high predictive value for job performance, is their low cost and widespread availability.

There are also *specific mental ability* (SMA) tests that are designed specifically for a particular work environment. Their accuracy in predicting employee performance might be even higher than tests of *general mental ability*²¹.

Cognitive tests are also characterized by a high degree of flexibility in the way they are administered (online testing is possible) and a high degree of standardization and therefore comparability of results. Once the minimum level of cognitive ability expected for a given position has been established, these tests are therefore well suited for pre-selecting candidates before applying more time- and cost-intensive methods.

20 According to a meta-analysis conducted for the U.S. Department of Labor on a database of more than 32,000 employees, the accuracy of predicting job performance on the basis of cognitive ability test scores is, for a cross-section of different jobs, $r=0.51$, and for professional and management positions (a category into which we would count the judge's position) even $r=0.58$; Source: F. L. Schmidt, J. E. Hunter, *The Validity and Utility of Selection Methods in Personnel Psychology: Practical and Theoretical Implications of 85 Years of Research Findings*, 'Psychological Bulletin' 124, no. 2, 1998, p. 264.

21 J. Grobelny, *Predictive Validity toward Job Performance of General and Specific Mental Abilities. A Validity Study across Different Occupational Groups*, 'Business and Management Studies', 4(3), 2018, pp. 1-12.

Personality tests

Another example of psychometric testing is personality testing. They provide insight into a candidate's personality traits that are relevant to how they work, collaborate with others, and achieve individual career goals. This helps determine what type of job or environment will be optimal for that person. Tests can also explore a candidate's hierarchy of values and motivations. You can ensure that what drives the candidate in the hiring process is aligned with what is important in the organization.

Most personality tests used in hiring processes are based on the "Big Five" theory. This is a model of personality by Paul Costa and Robert R. McCrae that consists of five dimensions: levels of neuroticism, extraversion, agreeableness, conscientiousness, and openness to experience²². It is important that the tool used takes into account the context of use, i.e. the recruitment process, in which respondents may attempt to give answers that they believe are expected (socially approved). Recruitment professionals are sensitive to this, and diagnostic tools designed for this purpose help

them detect such attempts with built-in control scales.

In addition to looking at the bright side of personality, some psychological tests also provide an opportunity to look at what is colloquially known as the "other side of the mirror". This type of test is most often designed to look for traits of narcissism, Machiavellianism, and psychopathy in subjects. The dark sides of personality are undesirable in most work environments because they can hinder cooperation, acceptance of feedback, or personal development. It seems particularly important to identify excessive levels of these traits in those who are to exercise judicial authority, as they may not only negatively affect their ability to cooperate and develop, but also pose too great a threat to the parties' right to have their cases heard impartially and fairly.

Personality tests can use a variety of techniques to collect data about a candidate, e.g.: questionnaire survey, interview, observation during a task. Personality tests are selection tools that are particularly recommended as a complement to

²² A. Beauvale, „Czynnikowe ujęcie osobowości (osobowość w świetle psychologii różnic indywidualnych)” [Eng. A factor-based account of personality (personality in the light of the psychology of individual differences)], in: A. Galdowa (ed.), *Klasyczne i współczesne koncepcje osobowości*, Wyd. UJ, Cracow 1999, pp. 235-255.

cognitive ability tests. This is because they provide insight into a completely different range of characteristics and predispositions of the people being tested.

Recruitment interviews

Collecting information about a candidate during a face-to-face interview can take many forms and serve many purposes. Telephone interviews, live meetings or, increasingly, video conferencing are used at various stages of the selection process. The purpose of these activities is to gather information about the candidate. This can be simple information about work experience and education (known as CV screening)²³. It can also be a structured interview to assess the level of competence, motivation and personality predisposition for the job. If done correctly, this part of the recruitment and selection process should allow an opinion to be formed as to whether the candidate meets the requirements set out in the competency profile and therefore whether he or she will be able to perform the duties of the job effectively.

The most popular tool of this type is the biographical interview. This is a structured interview that focuses on the candidate's work history. It consists of questions about behaviour, reactions or actions in specific situations in the past.

Another tool in this category is the behavioural interview. In it, the candidate's experiences are the starting point for exploring the level of competence in a specific area. The first step is to encourage the candidate to give an example of a situation in the past in which a particular competence was required (it does not have to be named, but the situation must be chosen in such a way that it really 'tests' the possession of that competence). After the first answer, clarifying questions are asked.

²³ Initial recruitment interview to verify the data contained in the application documents.

Example of a behavioral interview question assessing the goal-orientation competency:

1. Please give an example of an important professional goal you set for yourself and tell us how you achieved it. *What difficulties did you encounter along the way? How did you deal with them? Looking back, what would you have done differently?*

Examples of a behavioral interview questions assessing the decision-making competency:

1. Please describe a situation in which you had to make a decision without complete information. *How did you judge whether the information you had was sufficient to make a decision? How did you deal with the situation? What decision did you make and what was the result?*
2. Please tell us about the most difficult decision you have had to make in your career. *How did you make the decision? What was the outcome?*

The basic premise of biographical and behavioural interviewing methods is the belief that a candidate's past behaviours and actions tell us more about his or her competencies and aptitudes than

verbal statements. This is because people's behaviour in the past is the best predictor of their behaviour in a similar situation in the future.

Assessment Centre

The Assessment Center (AC) is a multi-dimensional approach to the integrated diagnosis of a candidate's multiple professional competencies. It is one of the most reliable and comprehensive tools available. It does not have a "standard" course, as the premise and source of advantage of this method is that the

assessment course is prepared for a specific position in a specific organization.

Those involved in this element of the recruitment and selection process typically spend a full day at the Assessment Center. This may be in a room at the target employer's premises, at an external



company providing the AC service, or in premises hired for the purpose. However, it is becoming increasingly popular to move the AC to a virtual space. During this day, candidates who have qualified for this stage of the hiring process complete a variety of tasks and exercises. During this time, they are observed by assessors. The assessors are people who are experienced in assessing competencies and who evaluate behavior according to specific criteria, i.e. indicators of the presence or absence of competencies as defined in the job profile. The final assessment of each participant's competencies is based on the opinions of several assessors after the candidate has completed all the tasks.

The advantage of this method over others is that it provides a very comprehensive assessment of the candidate. This is particularly useful in the case of positions that require different types of competencies. It is also important to measure the competence level of candidates in practice and to standardize the assessment. This ensures that the results are reliable and comparable. Professionals value this method for its ability to fully adapt the assessment process - both the type, content and form of the tasks - to the competency profile of the position and the specifics (and even the organizational culture) of the workplace. The prerequisite for this effectiveness is that at

least a minimum standard of the Assessment Center is maintained:

1. A person is assessed by at least two independent assessors.
2. Each competence is assessed in at least two exercises.
3. Only those behaviours that are observable are assessed.
4. A diverse set of tasks and exercises is chosen for the course of the session in order to give the competencies under examination the opportunity to manifest themselves in different forms and situations.
5. A variety of activities are designed and the exercises are arranged in such a way that they alternate and thus have a mobilising effect on the participants.

The integrated assessment session can take a very different course. The tasks most commonly used in assessment processes for job candidates in private companies are:

- Group exercises - discussions in which candidates are asked to analyse the information and data contained in the exercise description and to come up with concrete solutions within a given time limit; an appropriately designed exercise of this type can resemble a jury deliberation and test candidates' ability to draw conclusions from the

information provided, their ability to deliberate, persuade, be flexible and independent in their judgements.

- Simulation exercises - simulations of difficult conversations in which both the candidate and the assessor-actor act in specific roles; such a situation in which a candidate judge has to find himself or herself might be a simulation of a trial involving a difficult witness.
- Strategy game - reflecting organisational reality in the form of a simulation; a properly designed game can measure the competencies a judge needs to be able to accurately and quickly take action and make decisions on the many cases he or she will have on the run at the same time.
- Case study - an exercise in which, on the basis of the information received, the candidate has to assess a hypothetical situation; in the case of judicial candidates, the scenario of the task could include a lawsuit and a response to a lawsuit, and the candidate's task would be to present the strengths and weaknesses of each position, the prospects for a settlement, the risks to the smooth hearing of the case and proposals on how they could be prevented.
- Fact-finding - the participant is given an incomplete description of the situation and, after reading it, attempts to solve the task with a limited number

of additional questions; the exercise tests analytical skills, how to cope with time pressure and limited resources (number of questions), but by weaving into the content of the task data that the judge should be able to interpret correctly, it can also measure factual preparation for the job.

- Task basket (*in-basket*) - the task consists in sorting out in a certain, but presumably too short time, a large number of letters, memoranda, reports, decrees and correspondence with different degrees of importance and problems; the task in a court setting could be called 'wardrobe after leave' and simulate a situation in which a judge has to select a large number of cases due to the urgency of the necessary actions to be taken, with the candidate having to decide himself how to proceed if he runs out of time.

The Assessment Center concludes with an individual evaluation of each participant. The assessment and conclusions are prepared by a team consisting of independent experts: psychologists, sociologists, practitioners who conduct the assessment sessions, as well as people who already hold such positions or have direct contact with them at work.

Comparison of the systems of selecting judges in Poland and in the Netherlands

In the Netherlands, the courts have their own budgetary policy and the number of judicial posts is at their discretion, so they themselves decide whether to open a vacancy. In the Netherlands, this process is handled from start to finish by a special body, the National Selection Committee for Judges (*Landelijke Selectiecommissie Rechters*, or LSR for short), based in Utrecht. It consists of more than twenty judges and non-judges who are responsible for the policy and practice of selecting judicial candidates. Recruitment takes place four times a year. After the deadline for receipt of applications, they are examined by an ad hoc committee of several persons appointed for the purpose of the competition, composed of persons representing the Court and the LSR. The committee selects the most attractive applications on the basis of the documents. The number of people who go on to the next stage of the selection process is limited. The selected candidates take an intellectual aptitude test. Only those with a sufficiently high score, defined as “above academic level,” proceed. They participate in interviews with members of a local committee, which selects between one and three people

for each vacancy. At the next stage, the selected candidates undergo an integrated skills and personality assessment at an Assessment Center run by a private company. In the final stage, the candidates are interviewed by 3 pairs of LSR members (one judge and one non-judge in each pair). This team of 6 LSR members, after analysing the feedback from the Assessment Center and interviewing the candidate, decides for each candidate selected by the local committee whether or not to hire him or her as a “judge-in-training”. If the candidate receives a positive decision from the LSR team, the court is obligated to hire him or her.

Winners of competitions in the Netherlands are always initially hired as “judge-in-training”, which combines study with judicial duties. Depending on the professional experience of the candidate, the training can last between 15 and 48 months. During this time, the judge-in-training is evaluated two or more times. Only a positive assessment of the attainment of all the competences required for a judicial post allows for a proposal from the Judicial Council for appointment to the judicial office for life. There



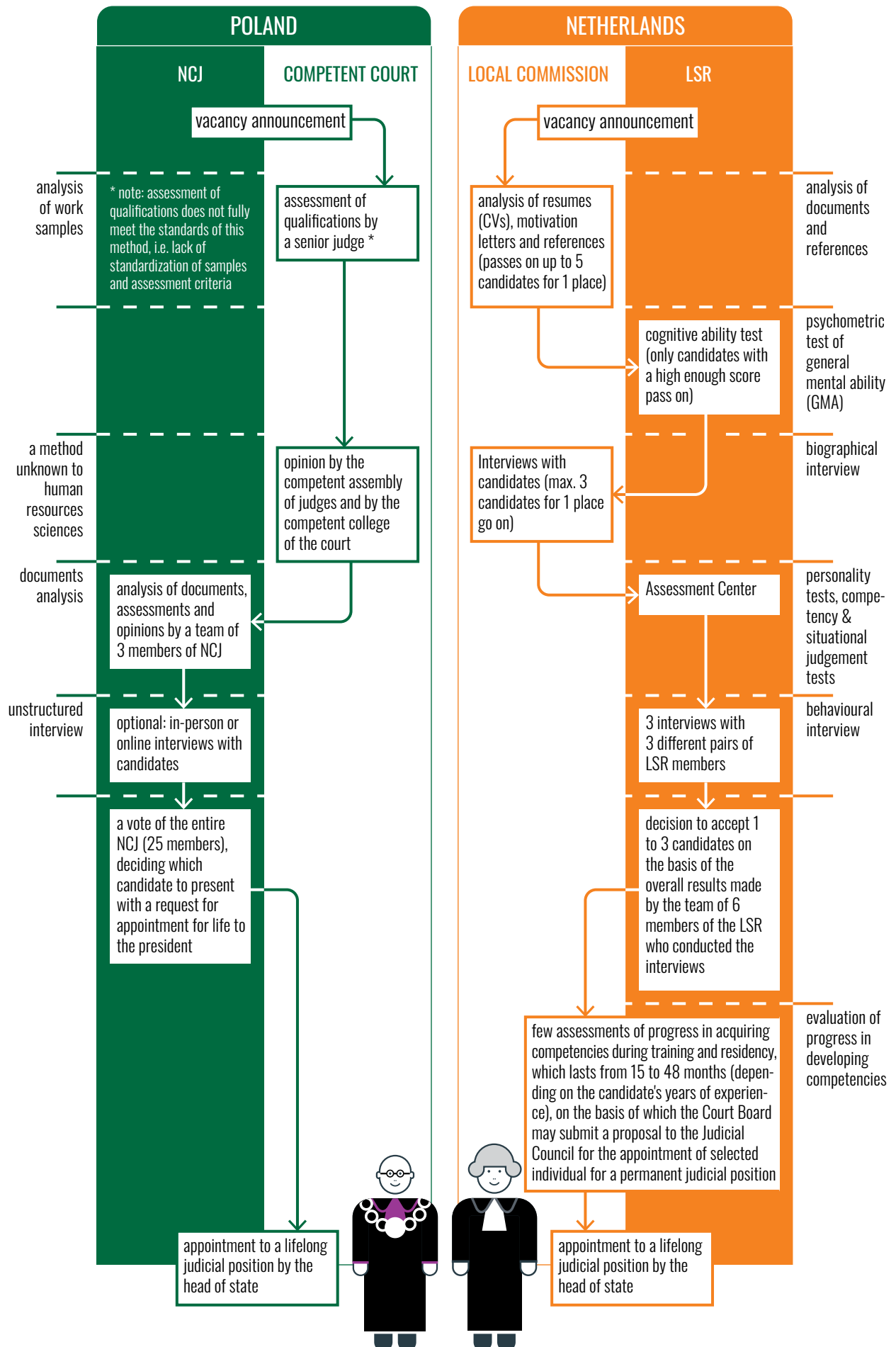
is no appeal to the court against the decision of the LSR prior to employment, only against the assessment at the training stage.

In Poland, the decision to launch a competition is made by a representative of the executive branch - the Minister of Justice or the President. In both cases, once the recruitment procedure has been launched, all candidates who meet the criteria have the opportunity to apply and participate in the procedure. The National Council of the Judiciary, composed of representatives of all three branches of government, is responsible for examining all applications. For most competitions, the Council's examination phase is preceded by an opinion and evaluation of the applications by the judges of the competent court. A judge appointed by the president of the competent court evaluates the qualifications of the candidates on the basis of a sample of their work and their performance. Opinions on each candidate are also expressed in the form of votes by the competent bodies of judicial self-government: assemblies of judges and colleges of the court. In the Council itself, a team of (usually) three members is appointed to examine the competition, which analyses the applications and submits them to the Council together with its recommendation. Sometimes, in the case of competitions for senior judicial positions, the panel hears the candidates

by videoconference or in person. The decision on the competition is made by a vote of the entire Council. The members make a discretionary decision and do not have to justify it. Therefore, it can happen that no candidate is supported or that the competition is won by a person other than the one recommended by the team that analysed the applications. The decision of the NCJ can be appealed in court.

The differences between the systems are both institutional and substantive. In the Netherlands, competitions are managed from start to finish by a specialized body with no other responsibilities, whereas in Poland the process is more diffuse and the final decision is in the hands of the National Council of the Judiciary, which is not specialized in selection issues. The Polish system does not provide for the narrowing down of the list of candidates who will proceed to the subsequent selection stages, so that the reviewing or evaluating body must do so for all candidates at each stage of the procedure. However, the main differences are of a substantive nature. The assessment of candidates in the Netherlands and Poland is based on different considerations. In Poland these are formal qualifications and opinions. The assessment of qualifications by the visiting officers is now carried out in a form that also tends to have the value of an opinion. This is because it is not standardized, which

makes it impossible to compare candidates, especially those in different professions. It examines the quality and effectiveness of work in a previous position, which may have been the result not only of the candidate's personal talents, but also of the abilities of colleagues, favourable working conditions, or the favour of superiors. In the Netherlands, attention is paid to what determines success in a future position: intellectual potential, personality traits, competencies required in a judge's job and the ability to master those that the candidate lacks. This is also done using scientifically proven predictive methods, and the performance of these methods is cyclically evaluated. Last but not least, the decision is made by people, people with different backgrounds, but with reference to a common and publicly known expected profile of a judge.



Roadmap for Reforming Judicial Selection System - Introduction

The “Roadmap for Reforming Judicial Selection System” presented in the following pages is the result of research on judicial selection processes in the Netherlands and other countries, as well as the successful reforms of the Dutch judicial selection system, culminating in the establishment of the National Commission for the Selection of Judges. In developing the map, we were aware of the ongoing debates about the various systems of judicial selection around the world. We tried to learn from the mistakes made in the reform of judicial selection processes in other CEE countries. The motivation for working on the map was the reform of competitions for vacant judgeships in Poland. However, the scheme presented in the map is universal and may prove inspiring or helpful to other countries that wish to make an effort to move to a merit-based system of judicial selection.

The “Roadmap for Reforming Judicial Selection System” is a tool primarily intended for policy makers. It is intended to guide them in a process aimed at achieving a judicial selection system that meets international standards, is independent, fair, transparent and effective,

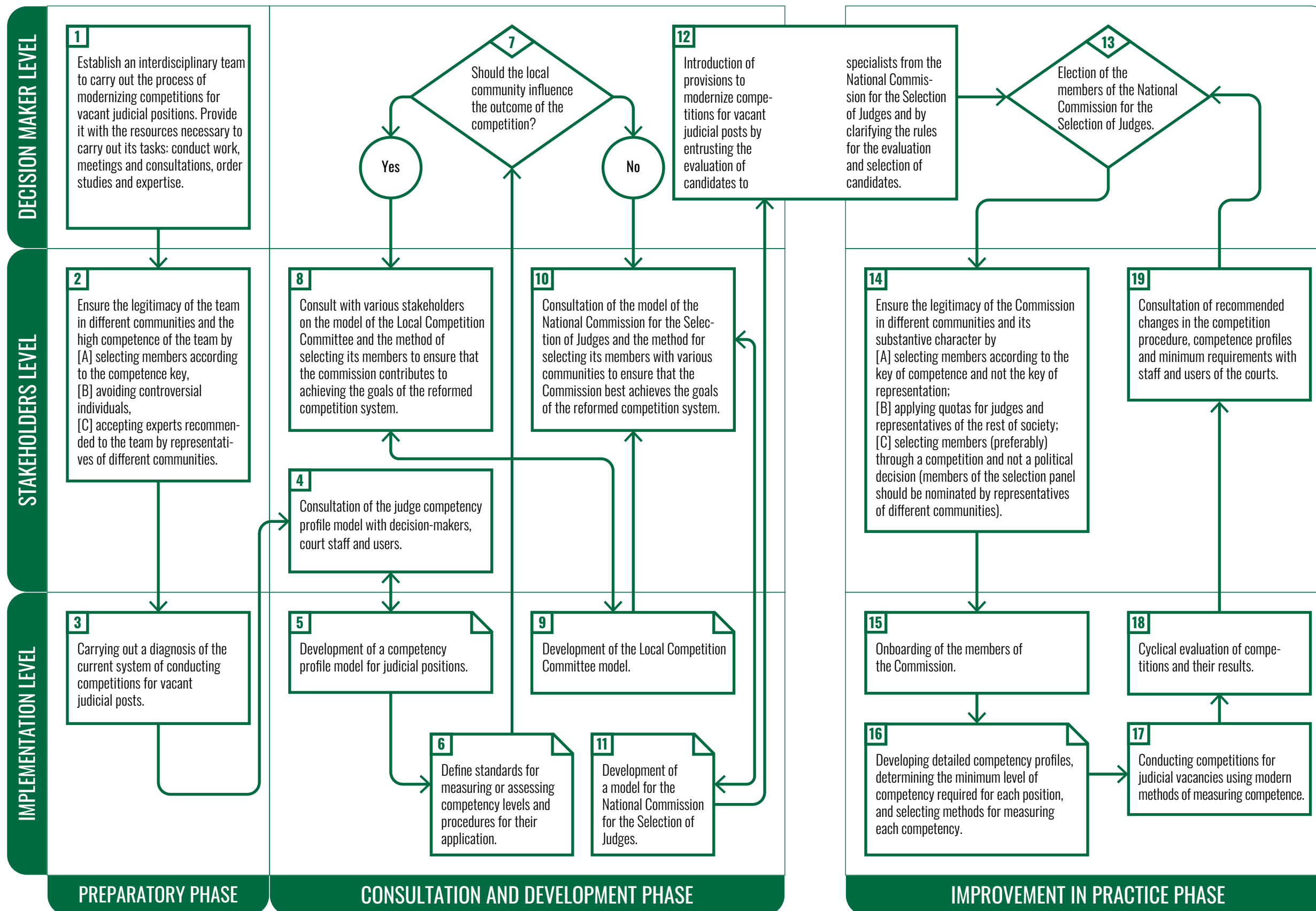
and ensures that the public has access to justice administered by the most competent persons.

The roadmap is the form of presentation of the reform project that we have found to be the most friendly, because it is important to respect the multifaceted nature of the process. Since it takes place at the interface of the delicate relationship between different authorities, and the implementers must be outsiders - completely devoid of this power - it is important that the decision-makers are aware of the importance of each step for the ultimate success of the reform. It is not enough to change the law; norms and practices must change. This requires, at the very least, understanding and agreement on the goals of the reform, and trust in those whose job it will be to implement it. The map makes it easier to ensure that no important step is missed, and also makes users aware that the process needs to take place at different levels. In addition to substantive development and policy decisions, it is very important to involve the public in the process - to consult on solutions and to include the interests of the various stakeholders in the judicial selection system.



Roadmap for Reforming Judicial Selection System

Implementation plan for changes in the way competitions for vacant judicial positions are carried out, developed by the Court Watch Poland Foundation v. 2023.11.29



Goal

A system for selecting judges that provides:

I. High legitimacy of judicial appointees under the law and in the eyes of the public.

II. Selection of the best possible persons in terms of qualities, predisposition and motivation to take up judicial positions.

III. Attracting a sufficient number of candidates for recruitment to be able to fill all vacancies with people who meet the requirements to the highest possible degree.

IV. Minimize the risk of appointing individuals with inappropriate qualities, aptitudes, or motivations to serve as judges.

Roadmap - Description of the steps

1. Establishment of an interdisciplinary team

The appointment of a team responsible for the preparation of the reform of competitions for judicial posts through diagnosis, consultation and design of target solutions adapted to the conditions and possibilities of Poland will contribute to the efficiency, effectiveness and transparency of the process. The team should be appointed by a body that has a real possibility to implement the designed solutions. The greatest potential for this lies in the hands of the Minister of Justice, who not only can initiate legislative changes, but also has other unique powers, such as the ability to issue regulations that help shape the system of competitions for vacant judgeships.

A prerequisite for the effective and rapid implementation of the interdisciplinary team's mission is to ensure that it has the resources it needs to carry out its tasks: to carry out its work, to hold meetings and consultations, to commission research and expertise. This primarily involves:

- the remuneration of members of the team who are not administrative staff seconded to work in the team as part of their official duties;
- the provision or rental of premises and equipment to enable meetings and consultations to be held both in person and by videoconference;
- financial resources at the team's disposal for research, external expertise, and consultations with stakeholders (including necessary travel).

2. Ensure legitimacy and high competence of the team

A priority in planning the reform of competitions for judicial vacancies should be to increase confidence in its merit, fairness and independence from external influence (see Annex 1: Standards of the European Network of Councils for the Judiciary). To date, this confidence in Poland has been low²⁴.

Confidence in the fairness of the new system of competitions for judicial vacancies will be determined by perceptions of how it is reformed, and this will depend to a large extent on the composition of the team. It is therefore worth investing in the social legitimacy of the process by:

- the selection of the members of the interdisciplinary team on the basis of merit, so that their skills and points of view or experience complement each other; the team should include a judge, a professional lawyer, a politician, a constitutional lawyer, a psychologist and specialists in recruitment and selection procedures;
- avoiding controversial individuals, such as those known for harsh public statements or radical views, as their presence on the team may both hinder their work and undermine confidence in their impartiality.;
- inviting various institutions, such as the Ombudsman, the President of the Republic, professional circles, such as the Psychological Association, as well as the parliamentary opposition, to recommend experts to the team who can contribute to the legitimacy of the process and the development of more universal and sustainable solutions.

²⁴ See footnote no. 6.

3. Carrying out a diagnosis of the current system of conducting competitions for vacant judicial posts

The first task of the team should be to gather information on the current system of competitions for vacant judicial positions and to evaluate it in terms of the functions and standards it should fulfil (see ENCJ Standards). The starting point for the reform of competitions for vacant judicial positions should be a document that clearly identifies the shortcomings as well as the strengths of the current system, where changes are needed and where stakeholders see the strengths of the current solutions.

It would be desirable for the information gathered to come from a variety of sources and to include the perspectives of those who are involved in the process of conducting competitions at different stages (psychologists, doctors, visiting judges, members of assemblies and

colleges, members of the NCJ) and at different times, the perspectives of those who take part in competitions, those who are already in judicial positions and those who could theoretically apply for them but do not (the question is why?), those who come into contact with judges in their work (court staff, stakeholders, lawyers) and, lastly, those who manage the judiciary.), people who come into contact with judges in their work (court staff, stakeholders, lawyers) and, last but not least, those who manage the judiciary. As a starting point, one can rely on the reports of the Court Watch Poland Foundation in the series “Where do judges come from?”, analysing the way competitions were conducted by different compositions of the National Council of the Judiciary in 2015-2017²⁵ and in 2018²⁶.

²⁵ B. Pilitowski, M. Hoffman, B. Kociołowicz-Wiśniewska, *Skąd biorą się sędziowie? vol. 1 (2014-2017)*, Court Watch Poland Foundation, Toruń 2017, https://courtwatch.pl/wp-content/uploads/FCWP_Skad_biora_sie_sedziowie_vol_1.pdf [accessed 26.11.2023].

²⁶ B. Pilitowski, B. Kociołowicz-Wiśniewska, *Skąd biorą się sędziowie? vol. 2 (rok 2018)*, Court Watch Poland Foundation, Toruń 2019, https://courtwatch.pl/wp-content/uploads/FCWP_Skad_biora_sie_sedziowie_vol_2.pdf [accessed 26.11.2023].

4. Consultation of the judge competency profile model with decision-makers, court staff and users

A key success factor in the creation of an effective and appropriate competency profile model is the involvement of representatives of various stakeholder groups in the process. The active participation of the aforementioned groups is based on the assumption that the most reliable source of information about the competency expectations of a given position is, first and foremost, the people who perform the tasks in this area and their

environment. The idea is also to obtain information from employees and users of the various organizational units of the justice system. This will be particularly important in answering the question of whether the competency profile should be uniform for all areas and levels of the judiciary, or whether variants suitable for different positions should be developed.

5. Development of a competency profile model for judicial positions

The main objective of this phase is to define the guidelines on which the target competency profile of a judge or profiles for specific judicial positions will be based. To this end, the following questions must be answered (some through analysis and reflection, others through research):

- What do we expect from judges working in certain positions?
- What challenges do judges face on a daily basis and what skills do they need as a result?
- What competencies of judges are most conducive to their effectiveness and efficiency in fulfilling the expectations defined for the positions in question?
- What competencies contribute to achieving high quality expectations?

In response to these questions, the shape of the model should be defined: the types of competences that can be taken into account in establishing the expected competence profile of candidates and the acceptable scope for modifying the profile given the nature of the post for which the competition is held.

6. Define standards for measuring or assessing competency levels and procedures for their application

The definition of standards for competency measurement should be based on the standards of organizations of professionals involved in this type of testing, such as the American Psychological Association's "Standards for Psychological and Educational Testing", the Society for Industrial Organizational Psychology's "Principles for the Validation and Use of Personnel Selection Procedures", the International Test Commission's "International Guidelines for Computer-Based and Web-Based Testing, Guidelines and Ethical Considerations for Assessment", "Principles for the Validation and Use of Personnel Selection Procedures" by the Society for Industrial Organizational Psychology, "International Guidelines for Computer-Based and Web-Based Testing" by the International Test Commission, "Guidelines and Ethical Considerations for Assessment Center Operations" by the International Task Force on Assessment Center Guidelines.

Standards should distinguish between general principles for measuring candidate qualities and requirements for different types of competencies or aptitudes, so that the standard is as high as possible while maintaining the economic and organizational rationality of the selection process. Standards should be sufficiently abstract to be applicable to different competencies within a given competency group, but also sufficiently rigorous to ensure that measurements or assessments made in accordance with them are credible to the committee, to candidates, and to external observers of the selection process.

7. Should the local community influence the outcome of the competition

One of the things that differs among judicial selection systems is whether the local community (usually the particular court) has an influence on the outcome of the competition for judicial office. The experts we consulted had different opinions on this issue as well. Theoretically, three solutions are possible:

- The support of the authorities of the court in which the vacancy exists is necessary to obtain the appointment.
- The decision on the selection of the candidate is made by the central authority, but the candidates are assessed and/or opinionated by the authorities of the court where the vacancy exists.
- The decision to select a candidate is made solely by the central authority.

In Poland, all three models have operated in recent years. The first one applied to competitions for the position of a judge of the Supreme Court until 2017; the selection of the NCJ was limited by law only to candidates who had received the support of the General Assembly of Judges of the Supreme Court. At the end of 2017 and the beginning of 2018, the participation of the Supreme Court in the competitions for positions in that court was completely

eliminated, so model No. 3 was applied. The intermediate model applies to judges of general jurisdiction courts. However, the lack of formal changes does not mean that the practice of its application has not changed. In the days when the majority of the members of the NCJ were elected by the judges, the Council followed the recommendations of the local communities very closely in its elections. The chances of obtaining a nomination without the support of the local judicial community were so slim that it was common for unsupported candidates to withdraw from the competition even before the final outcome of the competition. Despite the importance of the outcome of the competition, the manner in which decisions were made by the self-governing bodies was unclear to candidates and outside observers.

Each of these solutions has certain advantages and disadvantages. It should be the task of the interdisciplinary team to analyse the consequences of each of them and to make recommendations to those in power. The decision on this should be made at the political level, because whatever it is, it will meet with initial resistance and will require decision-makers to take responsibility for it.

8. Consultation on the model of the Local Competition Committee and the selection of its members

If the decision to involve the local community or the relevant court in the decision-making process is positive, it is necessary to develop institutional arrangements that will enable this idea to be implemented in accordance with the objectives of the reform. The experience of past competitions shows that the opinion of the candidates by the bodies that do it, as it were, “by the way”, was burdened with a number of drawbacks. The giving of an opinion, or the co-decision to appoint or reject a candidate, must be preceded by an honest analysis of information about that person (see ENCJ Standard on selection processes No. 7). Therefore, if the outcome of the competition is to be influenced by the local community or the relevant court, it is necessary to set up a local committee, composed of persons delegated to act as selection specialists, who will seriously and thoroughly review the applications and make an opinion or even a pre-selection of the applications.

The composition of the commission does not have to be limited to the judges of the target court or the judges of the superior court, as was the case for the opinions of the judicial self-government bodies. In the Netherlands, the administrative staff of the court as well as the National Commission for the Selection of Judges also have a representative on the local commission. It is conceivable that experts are also nominated to such a local commission by, for example, legal authorities, local government bodies or regional Public Benefit Councils (this would contribute to the implementation of the ENCJ Standard on the competent body for the recruitment of judges 2). Stakeholders in the process and potential new actors whose involvement would be taken into account would need to be consulted before proposals are made to determine the composition of such a local commission.

9. Development of the Local Competition Committee model

If the local committee is to have an impact on the outcome of the competition, the way in which its composition is determined, the terms of employment and the working rules of its members should ultimately be defined by law. Therefore, after analysis and consultation, the interdisciplinary team should present a proposal for involving the local community in the decision-making process in the form of a recommendation for a specific model of the “Local Competition Committee” and its operation..

Different options for involving local communities should be considered, whether committees set up on an ad hoc basis for specific competitions, or committees

operating on a permanent basis, e.g. at each Court of Appeal, to hear competitions in a particular appellate jurisdiction, with the possible participation of local community representatives in the case of competitions for positions in lower courts. In any event, such committees should operate in accordance with the ENCJ Standards and, if they are entrusted with the responsibility of pre-selecting or selecting candidates, they should do so on the basis of an objective assessment of competence using tools developed by the central body responsible for establishing common standards, criteria, procedures and tools for assessing candidates, the “National Commission for the Selection of Judges”.

10. Consultation on the model of the National Commission for the Selection of Judges

The main postulate of the proposed draft reform in the area of institutional changes is the establishment of a special body responsible for the process of selecting persons for vacant judicial positions in Poland. The model of its operation, and in particular the composition and method of appointment of its members,

should be the subject of broad consultations. There are two reasons for this. This body should meet the ENCJ standards of independence. Politicians and judges, who will lose influence over the decisions of the Commission once it is appointed, need to have confidence that the Commission will be truly impartial, objective

and independent. Consultations can help to establish such a model for the selection and possible removal of Commission members, quotas for representatives of different backgrounds, selection criteria, so that the body is not only independent but also has a reputation for impartiality in the eyes of objective observers.

11. Development of a model for the National Commission for the Selection of Judges

The postulated National Commission for the Selection of Judges is a specialized body responsible for the selection of judges. The final form of the Commission and its institutional legitimacy should be decided in the course of the work of the interdisciplinary team.

We recommend that the Commission be provided with functions in line with the ENCJ standards for bodies responsible for the selection and promotion of judges and with functions that enable the implementation of the ENCJ standards for the selection and promotion of judges in practice:

- a. Some of the members of the Commission should be judges, but the proportion of judges on the Commission should not exceed half of its membership.
- b. All members of the Commission should be selected for their competence and experience; each should

have a track record of managing people and/or implementing selection processes.

- c. Commission members should be appointed for multi-year (e.g. 6-year) terms, with the first intake of 1/3 of the members from each category appointed for a 6-year term, 1/3 of the members for a 4-year term, and 1/3 of the members for a 2-year term to ensure gradual replacement. A grace period of 3 years before reappointment is reasonable.
- d. Members should be selected through an open competition with seats to be filled according to specific quotas, e.g:
 - 40% of seats for judges;
 - 20 % of seats for those in other legal professions;
 - 20% of seats for specialists in the domain of selection processes;
 - 20% of seats for other representatives of the society.

- e. The competition criteria should include the competencies needed to perform the duties of the Commission, so it would be good for the interdisciplinary team to create a competency profile of the Commission member and propose a way to verify these competencies.
- f. The Commission should prepare a multi-year plan for its activities and publish an annual report.
- g. Commission members should be provided with the resources and conditions to perform their duties effectively and with dignity. They should be compensated for their service on the Commission. Each member of the Commission should devote a minimum number of hours to the Commission (e.g., a minimum of 10 hours/month), with the possibility of devoting more hours to specific tasks as needed and with the approval of the Commission's Board.
- h. The number of members of the Commission should be estimated by calculating the expected average commitment and workload of members. As participation in the work of the Commission will be an additional activity for its members, largely carried out remotely, permanent staff reporting to the Commission's Board will also be necessary for its effective operation.
- i. The Commission should enjoy not only institutional independence but also impartiality in the eyes of external observers. Members should not combine service on the Commission with the holding of a paid position from which they may be removed by political decision.

12. Introducing changes in the law

In this step, political decisions have to be taken on the form of the introduction of reforms of the competitions for vacant judicial positions. In the best-case scenario, the National Commission for the Selection of Judges gains statutory empowerment. In the Polish context, this could be the Act on the National Council

of the Judiciary. Such a scenario makes it possible to conduct future competitions for vacant judicial positions in accordance with European standards (see Annex), even if the various participants in the legislative process do not agree on a change in the way the members of the NCJ are selected (which seems highly

likely in the near future). There seems to be a greater chance of reaching a cross-party agreement on ensuring that judicial competitions are based on merit and conducted by an impartial, specialized body, separate from the National Judicial Council, as is the case in the Kingdom of the Netherlands, for example. Then, on the other hand, to reform the NCJ so that it meets the standards of the Dublin Declaration itself.

In the absence of a political agreement to amend the NCJ Act in order to transfer the conduct of competitions to the National Commission for the Selection of Judges, a number of changes increasing the accuracy and objectivity of the assessment of candidates are possible through amendments to legal acts with the rank of executive orders of the Minister of Justice. If only such a scenario proves to be feasible, it is very important that the Ministry of Justice does

not fail to establish an independent body responsible for the selection of judges. Such a body is necessary for two reasons. The first is independence. Decisions concerning the career of judges, including the establishment of competency profiles, methods of aptitude testing or the preparation of assessments of candidates' qualifications, should be prepared on the basis of merit by a specialized body whose members (at least most of them) are independent of the executive. Second, it is a question of merit. There is currently no specialized body in Poland that deals with these issues. The members of the NCJ, who now make the decisions, are not chosen for their competence in selection procedures or human resources management. Meanwhile, this issue requires a professional approach, especially in such an important matter as the selection of judicial representatives appointed for life.

What can be done by changing the statutes?

If it is possible to amend the statutory law, we propose that the Commission be given all the powers in the selection of judges, from the preparation of the substantive standards, tools and procedures, to the organisation and conduct of the competitions and the adjudication of the competitions. The Commission would inform the National Council

of the Judiciary of the outcome of the competition and the latter would submit a proposal to the President for the appointment of the winner. Just as the NCJ could not, until 2017, present a proposal for the appointment as a judge of the Supreme Court of a candidate who did not have the support of the General Assembly of Judges of the Supreme

Court, after the introduction of merit selection, the NCJ would not be able to present a proposal for the appointment as a judge of a person who was not approved by the National Commission for the Selection of Judges.

By transferring to the National Commission for the Selection of Judges the power to select a candidate to present with a proposal, the appointment of judges in accordance with the case law of the European Court of Human Rights could also be guaranteed²⁷. This would be the case even if the politicians did not agree to change the way the members of the NCJ are selected, since the competence to select a candidate for appointment would be transferred to a body that meets the standards. Since the participation of a political body or the head of state in the final stage of the process of appointing a judge - which involves approving the selection - is a widely accepted practice in Europe, the participation of the National Council of the Judiciary, formed in accordance with the Law of December 8, 2017, should also not be a problem, as long as the NCJ is bound by the recommendation of the National Commission for the Selection of Judges, which complies with the standards.

Finally, the National Council of the Judiciary could play its constitutional role of ensuring the independence of judges and the independence of the judiciary in the nomination process and control the legality of the selection process, including, in particular, the fulfilment of the formal criteria by the candidate. The content of the decision could be subject to judicial review, as is currently the case. It is also important to set a time limit for the Council to take a decision, so that the whole process is not unnecessarily prolonged or blocked by inaction on the part of that body. This is all the more so because delaying a decision on the approval of a promotion could be perceived as a form of pressure on the active judge. For the same reasons, i.e. in order to remove the suspicion that the delay in appointing a judge to the next position is dictated by expectations of his or her jurisprudence in the current position, the President should be obliged to appoint or refuse to appoint within a certain period of time. Alternatively, in order not to interfere with the prerogative of the head of state, the validity of the NCJ's request should be limited to a few months.

²⁷ See ECtHR judgment of 8.11.2021 in cases 49868/19 and 57511/19 *Dolińska-Ficek and Ozimek v. Poland*, ECtHR judgment of 3.02.2022 in case 1469/20 *Advance Pharma Sp. z o.o v. Poland*, ECtHR judgment of 23.11.2023 in case 50849/21 *Wałęsa v. Poland*.

What can be done by changing executive orders?

In the absence of the political will or agreement necessary to carry out the statutory changes, there is still a space for significant improvement of the standards of assessment of judicial candidates.

This can be achieved by using the powers of the Minister of Justice to issue executive orders governing some of the stages of this process. These competences derive from the provisions of the Act on the System of Common Courts of 27 July 2001:

- Article 57 § 9 refers to the competence to determine the scope of the data that the candidate must attach to the application.
- Article 57 § 10 states that the Minister of Justice shall determine the detailed scope and manner of conducting psychological examinations of candidates for the office of judge and the qualifications required of psychologists authorised to carry out such examinations, ensuring that the suitability of candidates for the office of judge is duly assessed, taking into account the nature of that office.
- Article 57i(4) makes it possible to specify the detailed procedure and manner in which the candidate's qualifications are to be assessed.

Changes to the content of the regulations should be preceded by the establishment of the National Commission for the Selection of Judges²⁸ and the preparation by it of procedures and standards, which should be used by the Minister of Justice when issuing new executive acts. They should aim to clarify the rules for examining and assessing candidates. The rationale for this is the content of Article 57i § 1 of the Act on the Common Courts System, according to which, when assessing the qualifications of a candidate for a vacant judicial post, the candidate's personality predispositions to the judicial profession are taken into account, and Article 61 § 1 pt. 2 stating that only a person who is of impeccable character may be appointed to the position of a judge. The existing ways of verifying these issues, i.e. a certificate from a psychologist, service opinions, references, a police officer's opinion or a certificate

²⁸ In the absence of a new statutory regulation, the establishment of a specialised body to deal with the issue of the election of judges could take place using the provisions contained in Article 7(4)(5) of the Act on the Council of Ministers of 8 August 1996, allowing a member of the Council of Ministers to appoint councils and teams as subsidiary bodies in matters falling within its scope of action. A secondary issue is the naming of the body so empowered. As it should fulfil the same criteria and perform similar tasks, we will consistently use the name National Commission for the Selection of Judges in the following text.

of no criminal record, are far from being sufficient. More detailed psychological examinations could help here. However, it cannot be left to the psychologists conducting the examination to make their own guesses about what aptitudes are desirable in the judicial profession and what impeccable character means. The examination must be conducted on the basis of a profile of expected and undesirable qualities. Its definition should be left by the Minister to the National Commission for the Selection of Judges.

First of all, on the basis of Article 57 § 10 of the aforementioned law, it is possible to define which diagnostic procedures must be applied in the context of psychological examinations (e.g. which cognitive ability tests, personality tests, etc.). It is possible to define the evaluation criteria and the format of the opinion. Thanks to the power of delegation to determine how the examinations are to be conducted, the Minister of Justice can also dispense with the practice of visiting candidates in private offices, which makes it difficult to control the quality of the examinations and the comparability of the results. Instead, he can select a single entity with which the Ministry of Justice would sign a contract guaranteeing candidates access to examinations conducted to the same standard in all provincial cities, negotiate a competitive price, and establish rules for controlling the quality of the examinations.

The Minister should leave the power to control the entity conducting the examinations to the National Commission for the Selection of Judges, in order to avoid accusations that this power is being used to influence the results of the examinations by a political body.

The optimal solution would be to prepare, together with the organisation selected to carry out the tests, a scenario for these tests using selection methods adapted to the predispositions identified in the profile. A specialised organisation would be able to provide tests requiring specialised tools, e.g. software, or additional personnel. It could also develop, together with the Commission, diagnostic tools specifically designed to assess the characteristics relevant to the role of the judge.

The tests could also be divided into two stages. In this way, individuals who receive a *general mental ability* test result that suggests they would not be successful in a job competition would be able to opt out of further stages without incurring the cost of the entire test. The fact that a person approaches the test should be recorded, but the result should remain confidential until the person tested decides to apply for the job. Repeating the test should not be possible for at least a year. Test results should be valid for several years.

Another possibility of determining the information to be taken into account when considering a candidate's application is provided by the delegation contained in Article 57 § 9 of the Act on the Common Court System, according to which the Minister of Justice may determine the scope of the data that the candidate must attach to the application. This provision creates the possibility of obliging candidates to attach to their application an assessment of the candidate's level of competence and suitability carried out by the National Commission for the Selection of Judges. The assessment would be made, at the candidate's request, on the basis of the results of psychological tests made available to the Commission (which the candidate would have to take prior to the assessment) and structured interviews and possibly other procedures of proven cognitive value applied by the members of the Commission. The assessment would not be made for a specific competition but for an application for a specific type of appointment and the candidate would be assessed in the light of the competence profile

developed by the Commission for a specific type of court. As in the case of psychological testing, the fact that a person undergoes the competency assessment should be recorded, but the result should remain confidential until the person tested decides to stand as a candidate. The validity of the assessment results should be up to 5 years. The possibility to retake the assessment should be available after 2 years at the earliest²⁹.

Article 57i(4), of the same law makes it possible to determine the detailed procedure and manner in which a candidate's qualifications are to be assessed by one or more judges designated by the president of the competent court. This delegation makes it possible, firstly, to ensure, to a greater extent than at present, that the assessments are made in a uniform manner, with reference to universal assessment criteria and permitting a fair comparison between candidates from different legal professions. Secondly, it will be possible to clarify the conditions to be met by the judges who prepare the evaluations and to ensure

²⁹ It should be noted that such a solution, in which a centralized competency assessment is carried out at the initial stage of recruitment, without prior pre-selection of candidates (apart from self-selection based on the results of psychological tests), is not an optimal solution due to the high cost of ensuring that all interested candidates (even those who are not yet candidates!) have their competencies and aptitudes assessed to a high and uniform level. In the absence of the possibility of legislative changes allowing for the pre-selection of candidates (gradual verification of requirements and rejection of candidates at different stages of the process), it is necessary to ensure that the Commission has sufficient human and technical resources to meet the demand for competence assessments of those interested in becoming candidates.

a uniform standard of evaluation also through a system of training and certification.

In order to raise and unify the standards for the assessment of qualifications, a list of judges entitled to make assessments could be established by the executive order and maintained by the National Commission for the Selection of Judges on behalf of the Minister of Justice. Inclusion on the list would require training and passing an examination. Eligibility could be lost in the event of repeated errors or deviations from the rules of assessment. In order to facilitate the process of

qualifying a sufficient number of judges, the requirement for inclusion in the list could be postponed for one or two years, but an incentive in the form of an additional salary supplement could be provided. It could be done by adding a bonus for the preparation of an opinion by a judge who has passed the examination in the “Regulation on the Functions and Method of Determining the Functional Allowances to Which Judges are Entitled”. In this way, ad hoc judges and visiting judges would have an incentive to finish training and pass an exam before they become mandatory.

13. Election of the members of the National Commission for the Selection of Judges

The decision on the selection of the members of the Commission, regardless of the institutional arrangement adopted, should take into account the requirements for composition and selection principles described in section 11 above. Since the success of the reform will depend to a large extent on the ability of the members of the Commission to carry out the task entrusted to them, it is of the utmost importance that only persons with the necessary competence are appointed. Therefore, a great deal

of effort should be put into the recruitment phase: promoting the Commission, searching for the right people and addressing individual calls for applications to them, involving individuals and institutions who have an idea of who would be suitable to be a member of the Commission and asking them to recommend such people to participate in the competition. Obviously, these activities cannot be carried out directly by the people who will make the decisions that determine the competition. However,

such activities must be planned and consciously undertaken; it is a misunderstanding to assume that simply publicly announcing the recruitment of commission members will be enough to recruit the best possible people. Decision-makers should not be forced to fill all seats at once. If there is not a sufficient number of candidates with the required competencies in each category of members, vacancies should be left open and the recruitment process repeated sometime later, rather than appointing people who do not sufficiently fulfil expectations.

14. Ensuring the legitimacy and high competence of the Commission

The members of the Commission should be selected according to the criteria proposed by the interdisciplinary team, i.e., from the competence key. The temptation to determine the composition of the commission according to the representation key should be avoided, since members selected for the Commission to represent a particular group will make decisions based on the viewpoint or interests of that group rather than on objective considerations of merit. Ideally, the selection of committee members will be based on merit, i.e., the competence of the candidates, by those charged with making the selection based on that criterion. In practice, it can be assumed that the selection will have to be made by a political body, e.g. the Minister of Justice, if the Commission does not have a legal mandate, or a parliamentary commission or the National Council of the Judiciary, if the decision-makers wish to use an existing body. However, a scenario is likely in which the introduction of a legal regulation transferring influence over the selection of judges from the National Council of the Judiciary to the National Commission for the Selection of Judges will require the agreement of the various centres of power. In such a scenario, it is more probable that the selection will be carried out by a mixed panel of representatives of different bodies. It is good practice for professional organizations involved not only in the judiciary but also in selection procedures or psychometric research (e.g. the Psychological Association) to make recommendations for members of the panel selecting candidates for the Commission.

15. Onboarding of the members of the Commission

The members of the Commission, once selected, will have different backgrounds and experiences, which is desirable, but also different levels of knowledge: about selection processes on the one hand, and about the work of a judge on the other,

which would make cooperation difficult. It is therefore necessary for the members of the Commission to complete their knowledge in their respective fields before carrying out their respective duties.

16. Development of detailed competence profiles, and selection of assessments methods

Before beginning the recruitment and selection process, which should be objective and substantive, it is necessary to conduct a job analysis of the judges. For this purpose, it is necessary to describe: what the judge working in the position does, what tasks and activities he or she performs, what his or her role is in the organization and structure, what the success criteria of his or her work are. This is a kind of basis for creating a complete picture of the work of the position. Knowing the conditions, expectations and challenges of the work of individual judges, it is possible to create profiles of candidates for the position of a judge of courts of any level and type of judiciary.

Some of the qualities required of candidates for judicial office are already

defined by law, such as education or a certain number of years of professional experience. There is still a need to specify a number of other qualities that are mentioned in very general terms in the laws (e.g. personality predispositions, impeccable character) and to define a catalogue of competencies (hidden in Polish legislation under the term “qualifications” in the broad sense of the word) that a candidate for a judgeship at a given level of the judiciary should have.

Different methods can and should be used to profile and determine the most desirable and necessary qualities to be effective as a judge in courts at different levels, in order to objectify this choice. A survey can be conducted among judges and those who interact with them

at work (court staff, lawyers, prosecutors), asking respondents to recall people who hold the office of judge and who they think do their job very well. We then ask respondents to answer a series of questions about the qualities of these judges that they think make them achieve such results. In the next step, we ask them to think of people who do a poor job as judges and what qualities (competence, aptitude) they might be lacking.

The competencies that will be the criteria for selecting candidates must be measurable, and the way to measure them must be based on intersubjective indicators. Once it has been determined what competencies we are looking for, the question of how they manifest themselves and how to most effectively measure candidates' possession of them must be

answered. If the recruitment and selection process is to be reliable and accurately predict the candidate's fit with the expectations of the job, it should include an examination of the candidate's competencies and aptitudes using appropriate methods. The choice of methods should be based not only on their predictive accuracy, as evidenced by scientific research, but also on their effectiveness (the ratio of time and money spent to the cognitive benefits obtained). Special attention should be paid to the issue of accessibility of the assessment process - both in terms of where one lives and from the point of view of candidates with disabilities that do not preclude one from performing the duties of a judge, but which for some reason may constitute a handicap in participating in the assessment process.

17. Conducting competitions for judicial vacancies using new methods of measuring competence

Depending on the institutional model chosen and the legal changes that could be made at that stage, the competitions would be held either in the traditional way, but with the use of more objective and comprehensive information on the candidates' aptitude and competence; the applications would still be examined by

visiting judges, judicial assemblies, judicial colleges, analysed by teams of the NCJ, but the decision on the selection of the candidate would still be taken by the majority of votes of the members of the National Council of the Judiciary. Unfortunately, in this scenario it could still be a discretionary decision, as individual

Council members would not have to justify their voting decisions.

In the scenario in which the law is amended, the National Commission for the Selection of Judges can assume responsibility for the conduct of competitions, using the full potential of modern selection methods to measure and compare the competence of candidates. In the

maximum scenario, it decides on competitions on this basis in a way that is binding on the NCJ.

Depending on the model used, local communities may be involved in judging competitions through local committees, provided they meet standards of independence and substantive selection based on established criteria.

18. Cyclical evaluation of competitions and their results

Each element of the selection process and its results in terms of decisions to select specific individuals should be subject to cyclical evaluation. Judges selected in competitions should be evaluated in terms of the quality and efficiency of their work. The profile of those who perform below expectations should be examined and the conclusions of the analysis taken into account in proposals for changes to the system.

A very important perspective of evaluation of competitions should be their fairness in the eyes of participants and external observers. The degree of procedural fairness of decision-making processes that affect individuals has an impact on their psychological well-being. Both applicants for the office of judge and judges seeking promotion deserve to be treated fairly in competition proceedings.

19. Consultation of recommended changes after the evaluation

The evaluation should be used to improve the competition process. If its conclusions indicate the need for major changes,

stakeholders in the system should be consulted on the proposed changes.



Cultural context of judicial selection reform – the case of Poland and the Netherlands

When considering the modernization of competitions for judicial vacancies, it is essential to take into account the cultural conditions of the country in question. It is these conditions that form the basis of an adequate plan and have the greatest impact on the success of the changes introduced, the efficiency and appropriateness of the processes and the systemic solutions. What works in one country may not be acceptable in another.

This is done through so-called cultural dimensions, which are used to create comparisons and social contrasts. Cultural dimensions illustrate the dominant preferences in a given social group and provide a measure of universal problems. Although several countries may face similar challenges and problems, the solutions to these problems are likely to be somewhat different.

Geert Hofstede's research

In the late 1960s and early 1970s, Dutch sociologist and anthropologist Geert Hofstede, working for IBM, surveyed employees in 40 countries to explain the differences in the way the company's various offices operated, communicated, and solved problems. In his research, Hofstede hypothesized that the social environment in which we work has a huge

impact on all kinds of processes and values we follow at work. In his landmark book, "Culture's Consequences: International Differences in Work-Related Values", he presented evidence to support the idea that cultural differences impact the work of employees and the effectiveness of process management in organizations. Hofstede defined organizational



culture as “the collective programming of the mind that distinguishes the members of one organization from others”³⁰.

While this metaphor sounds a bit technical, the gist of it is that we learn culture through the process of socialization. We acquire it by interacting with other people and by being members of a particular group. It is also significant that we are not only programmed by culture, but also take on the role of programmers who co-create it. We are both “fabric” and creators. This means that while we should take cultural conditioning into account when planning for change, we do not have to feel completely determined by culture. Our actions can contribute to cultural change, at least in the groups to which we belong, such as work organization.

In his work, Hofstede initially distinguished four dimensions by which the cultures of different countries differ:

1. Power distance - the degree of expectation and acceptance of inequalities in the distribution of power as expressed by less influential

members of an institution or organization.

2. Masculinity vs. Femininity - which qualities are valued more: masculine (perseverance, material success, directness, strength, independence) or feminine (concern for others, gender equality, compassion for the weak, conflict resolution through compromise)³¹.
3. Uncertainty avoidance - the level of anxiety that exists in society due to threats about the future.
4. Individualism vs. Collectivism - to what extent the individual and his/her voice is important, and to what extent the group and its interests are important.

In later years, two further dimensions were added to the model:

1. Long-term orientation - focus on values related to future rewards, value perseverance and adaptability to new situations.
2. Indulgence - reflects the willingness of society to respect the immediate desires of its members and to consider the realization of individual dreams as something desirable.

³⁰ G. Hofstede, G.J. Hofstede, M. Minkov, *Cultures and organizations: Software of the Mind*, McGraw-Hill, 2010, p. 344.

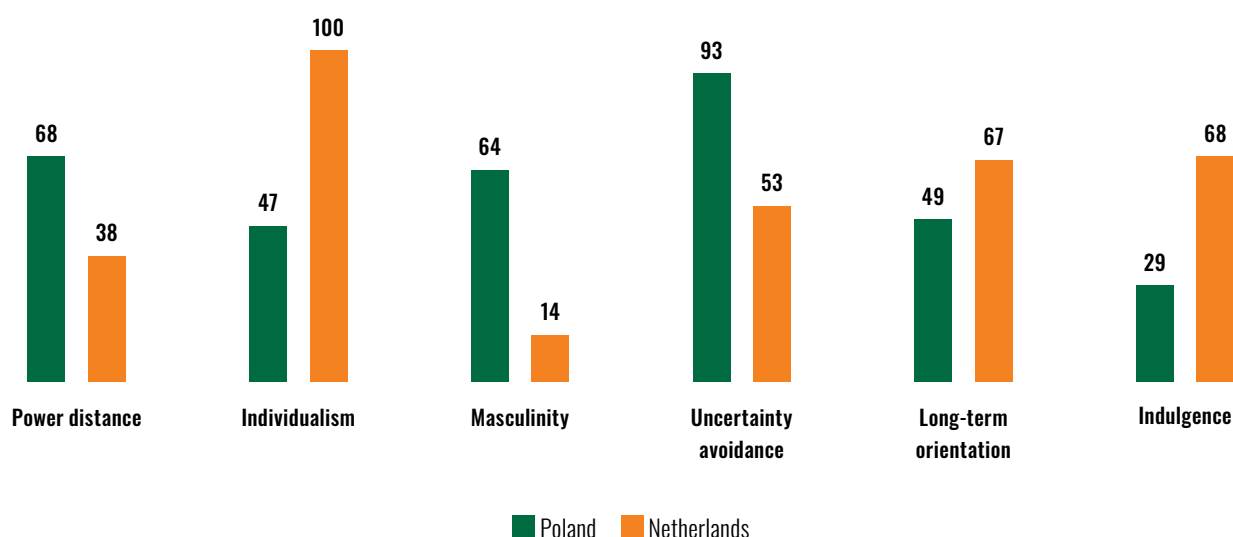
³¹ Recently, followers of G. Hofstede's work are moving away from the term “masculinity” to “achievement and success orientation” or “task orientation” and to “people orientation” instead of “femininity”.

Comparison between Poland and the Netherlands

When examining the way judges are selected in the Netherlands for the purposes of this report, it is important to look at the cultural differences between Poland and the Netherlands. With this approach, it is possible to identify

elements of the Dutch system whose success on home soil may be related to favorable cultural conditions, and which will be difficult to replicate in Poland due to certain differences in cultural patterns.

Graph 2. Cultural dimension scores for Poland and the Netherlands



Source: <https://www.hofstede-insights.com/country-comparison-tool> [accessed 28.11.2023]

Power distance in Poland and the Netherlands

In Poland, power distance reaches a rather high value (68 points on a scale of 1:100, where 100 is the maximum value). This means that we are a hierarchical society in which everyone must have a specific place and function.

Centralisation of power is the common norm and infallibility is expected from those in authority.

This is also confirmed by the research conducted by A. Sitko-Lutek, who



believes that Polish culture is characterised by a high distance from authority³². At the same time, this distance is greater in public sector organisations than in private companies.

Dutch society, with an index of 38, is highly egalitarian - the power distance there is very low. This is characterised by a desire to reduce inequalities between people, a move towards decentralisation. Countries like the Netherlands consider it immoral to emphasise social inequalities. Arguably, this is why people from

different social backgrounds can participate in decision-making processes.

Based on the research, it can be concluded that a low distance to authority has a positive influence on the improvement of quality management. For example, in cultures characterized by low power distance, it is easier to introduce a feedback culture. In cultures with a higher power distance, quality concepts will only work if the specific and necessary needs of the participants in the change process are safeguarded during implementation.

The individual or the group? Dimensions of individualism and collectivism.

Individualism and collectivism are cultural dimensions that indicate how much people value independence, commitment to the rules of society, and loyalty to the group to which they belong.

The Netherlands with an index score of 100 is an individualistic society. This means that there is a strong preference for loosely connected social structures in which individuals are expected to have the opportunity to realise their individual plans and desires. The source

of identification is the individual. Individuals in individualistic societies take care of themselves, value personal success and put their own interests first.

Dutch culture contains a contradiction: a high level of individualism goes hand in hand with a very feminine culture, characterized by a focus on people and good interpersonal relationships rather than on achievement, ambition and success. This combination makes for a very tolerant society.

32 A. Sitko-Lutek, *Kulturowe uwarunkowania doskonalenia menedżerów* [Eng. *Cultural determinants of managerial improvement*], Wydawnictwo UMCS, Lublin 2004; A. Sitko-Lutek, *Kulturowa zmienność organizacji* [Eng. *Cultural variability of organizations*], PWN, Warsaw 2002.

Polish culture does not stand out on the individualism-collectivism axis in either direction. Again, this may be the result of moderate attitudes in this regard, or it may be the result of differences between individual groups that are either slightly more individualistic or collectivistic, but

neither of which predominates. If there are indeed cultural differences in this respect in Polish society, e.g. regional or class differences, this may lead to tensions within the organization, where people socialized in different cultures will meet.

Masculinity versus femininity

In “feminine” societies, people are most important, and good relations with others are a personal value. Supporting those in need is therefore the norm, and social issues will be at the forefront of government action. In “masculine” cultures, results count, the best deserve support, and personal value lies in achievement and success. The state is expected to create favorable conditions, not provide direct assistance.

Poland’s score of 64 on this dimension indicates that it’s a more “masculine” society. Such a score tells us that the emphasis is on norms of fairness, competition, and achievement, and that

confrontation is an acceptable form of conflict resolution. Poland’s score, however, is far from the maximum, which may indicate that although the masculine pattern dominates, not everyone fully identifies with it.

The Netherlands, on the other hand, represents a typically “feminine” culture (with a score of 14) and is similar to the Scandinavian countries in this respect. This means that it is important to work together, communicate, be open, engage in dialog, share responsibility and create a sense of influence. It is important to build and maintain good relationships and foster a friendly atmosphere.

Avoiding uncertainty

With 93 points on this dimension, Poland has a very strong preference for avoiding uncertainty. In practice, this means that the uncertainty that accompanies life is a constant threat that must be fought.

The need to frame everything in terms of laws and regulations prevails. There is a repression of dissenting behaviour and views in society, and a reluctance to innovate and change. Instead, the main



motivators for action are a sense of security and recognition or belonging.

The Dutch culture is characterized by an attitude that pervasive uncertainty is a natural part of life and must be accepted. The main motivators for action are achievement and recognition. A strong

feature of Dutch culture is also the acceptance of different and innovative actions and ideas. Therefore, all kinds of systemic solutions are introduced in an efficient and generally acceptable way. The number of procedures, laws and regulations is kept to a minimum.

Long-term orientation - short-term orientation

The Netherlands, with an index of 67, represents a culture focused on solutions that deliver results and return on investment in the long term. A Dutch society focused on the long term is more practical. In terms of systemic solutions, the Netherlands focuses on investing in modern education. The aim of these measures is to prepare for the future.

Polish culture has an average score (49) in this dimension. This means that it is neither more normative nor more pragmatic. Again, this may be due to the fact that we have a moderate culture in Poland, or to the presence of different

patterns in society, none of which is dominant. In contrast to societies similar to the Netherlands, short-term cultures are more concerned with finding the “absolute truth” than with finding a practical solution to a problem; they show an attachment to tradition, to solutions that have already been introduced, and are satisfied with quick results. This includes a concern for saving face and personal stability. Societies that focus on short-term solutions are highly suspicious of social change. The lower index indicates that the Poles are also slightly more concerned than the Dutch about ensuring their own sense of security.

Indulgence

The low value of this indicator (29) indicates that Polish culture is characterized by restraint and restriction. Societies with the lowest values of this indicator tend to be cynical and pessimistic. There is also a greater need to maintain order and a tendency to accept authoritarian forms of leadership, including at the institutional level.

With a significantly higher score on this dimension, the Netherlands is an example of a country where the satisfaction of individual desires is widely accepted. Such countries are characterized by higher levels of optimism, better health, higher fertility rates among the better educated, higher levels of friendliness toward strangers, and a commitment to civil liberties.

Impact of cultural differences on the organisational culture of the judiciary

Of all the differences in the dimensions discussed here between Poland and the Netherlands, putting people first is particularly noteworthy. This “femininity” (as Geert Hofstede would say) of the Netherlands society’s culture explains, for example, the lack of formal dispute resolution mechanisms in the Dutch system of appointing judges. The possibility of appealing to a court against the outcome of a competition for a judicial vacancy or role allocation after appointment is basically non-existent. However,

from our numerous discussions with Dutch judges on this subject, it does not appear that they feel that such an institution is lacking. The decision-making process as it is practiced seems to enjoy the respect of all concerned. The relatively egalitarian structure of the judiciary, with a rotating distribution of responsibilities, is also an expression of this cultural difference. Judges, for example, take on more prominent and prestigious positions, only to voluntarily return after some time to work in a local court.

Annex: Minimum standards of the European Network of Councils for the Judiciary for the recruitment, selection, appointment and promotion of judges

The European Network of Councils for the Judiciary (ENCJ) brings together councils of the judiciary and institutions independent of the executive and legislative branches of government working for the independence of the courts and the independence of judges in European Union

countries. Since 2010, ENCJ has been developing minimum standards for various aspects of the judiciary. The standards presented below were adopted by the ENCJ in the so-called Dublin Declaration, adopted at its plenary meeting on May 9-11, 2012³³.

Indicators of minimum standards regarding the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary

1. Judicial appointments should only be based on merit and capability. There requires to be a clearly-defined and published set of selection competencies against which candidates
- for judicial appointment should be assessed at all stages of the appointment process.
2. Selection competencies should include intellectual and personal skills of

³³ ENCJ, *Dublin Declaration on Standards for the Recruitment and Appoinment of Members of the Judiciary*, https://www.encj.eu/images/stories/pdf/GA/Dublin/encj_dublin_declaration_def_dclaration_de_dublin_recj_def.pdf [accessed: 26.22.2023]

- a high quality, as well as a proper work ethic and the ability of the candidates to express themselves.
3. The intellectual requirement should comprise the adequate cultural and legal knowledge, analytical capacities and the ability independently to make judgments.
 4. There should be personal skills of a high quality, such as the ability to assume responsibility in the performance of his/her duties as well as qualities of equanimity, independence, persuasiveness, sensibility, sociability, integrity, unflappability and the ability to co-operate.
 5. Whether the appointment process involves formal examination or examinations or the assessment and interview of candidates, the selection process should be conducted by an independent judicial appointment body.
 6. Where the appointment process includes assessment based on reports and comments from legal professionals (such as practising judges, Bar Associations, Law Societies etc.) any such consultation must remain wholly open, fair and transparent, adding that the views of any serving judge or Bar Association should be based on the relevant competencies, should be recorded in writing, available for scrutiny and not based on personal prejudice.
 7. Whilst the selection of judges must always be based on merit, anyone appointed to judicial office must be of good character and a candidate for judicial office should not have a criminal record, unless it concerns minor misdemeanours committed more than a certain number of years ago.
 8. Diversity in the range of persons available for selection for appointment should be encouraged, avoiding all kinds of discrimination, although that does not necessarily imply the setting of quotas *per se*, adding that any attempt to achieve diversity in the selection and appointment of judges should not be made at the expense of the basic criterion of merit.
 9. The entire appointment and selection process must be open to public scrutiny, since the public has a right to know how its judges are selected.
 10. An unsuccessful candidate is entitled to know why he or she failed to secure an appointment; and there is a need for an independent complaints or challenge process to which any unsuccessful applicant may turn if he or she believes that he/she was unfairly treated in the appointment process.
 11. If the Government or the Head of State plays a role in the ultimate appointment of members of the judiciary, the involvement of a Minister or the Head of State does not in itself contend against the principles of independence, fairness, openness and transparency if

their role in the appointment is clearly defined and their decision-making processes clearly documented, and the involvement of the Government or the Head of State does not impact upon those principles if they give recognition to decisions taken in the context of an independent selection process. Besides, it was also defined as a Standard in this field that where whoever is responsible for making the ultimate appointment (the Government or Head of State) has the right to refuse to implement the appointment or recommendation made in the context of an independent selection process and is not prepared to implement the appointment or

recommendation it should make known such a decision and state clearly the reason for the decision.

12. Where promotion of members of the judiciary is based on the periodical assessments of professional performance the assessment process must be conducted according to the same criteria and with the same guarantees as those provided for the initial selection and appointment process (i.e. it should be independent, fair, open and transparent, and on the basis of merit and capability) and should be based on the judge's past performance.

Indicators of minimum standards in relation to the competent body to decide on the recruitment, selection, appointment and (where relevant) the promotion of members of the judiciary

1. The procedures for the recruitment, selection or (where relevant) promotion of members of the judiciary ought to be placed in the hands of a body or bodies independent of government in which a relevant number of members of the judiciary are directly involved and that the membership of this body should comprise a majority of individuals independent of government influence.
2. The judiciary must not necessarily have an absolute majority membership on such a selection and appointment body, since in some of the countries of the Project Team there is a perception that a selection body on which the existing judiciary have a majority membership leaves itself open to the criticism that it is a self-serving body merely recruiting those prospective judges whom it favours

- and promoting favoured judges from within its own ranks.
3. The body in charge of selecting and appointing judges must provide the utmost guarantee of autonomy and independence when making proposals for appointment.
 4. It must be guaranteed that decisions made by the body are free from any influences other than the serious and in-depth examination of the candidate's competencies against which the candidate is to be assessed.
 5. The body in charge of judicial appointments should comprise a substantial participation of legal professionals or experts (including experienced judges, academics, lawyers, prosecutors and other professionals) and could also include independent lay members representing civil society, appointed from among well known persons of high moral standing on account of their skill and experience in matters such as human resources.
 6. The body in charge of judicial selection and appointment could be the appropriate national Council for the Judiciary (or a specific committee or department within the Council for the Judiciary) or an independent national judicial appointments board or committee and that in those systems where the compulsory period of induction training is part of the recruitment and selection process, the relevant Academy, College or School of the Judiciary could play a major role by making recommendations in relation to the candidates which it considers should be appointed on the basis of their performance during the induction training.
 7. The body in charge of the selection and appointment of judges must be provided with the adequate resources to a level commensurate with the programme of work it is expected to undertake each year and must have independent control over its own budget, subject to the usual requirements as to audit.
 8. The body in charge of judicial selection and appointment must also have adequate procedures in place to guarantee the confidentiality of its deliberations.
 9. The body in charge of judicial selection and appointment must create a sufficient record in relation to each applicant to ensure that there is a verifiable independent, open, fair and transparent process and to guarantee the effectiveness of the independent complaints or challenge process to which any unsuccessful applicant is entitled if he or she believes that s/he was unfairly treated in the appointments' process.
 10. The body in charge of judicial selection and appointment should guarantee the effectiveness of the independent complaints or challenge process to which any unsuccessful applicant is entitled if he or she believes that s/he was unfairly treated in the appointments' process.

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Acknowledgments

The publication you are holding in your hands would not be possible without the support of many people who shared their knowledge and experience with us. It is impossible to list them all here. However, we would like to express our special thanks to the Chairman of the National Commission for the Selection of Judges of the Kingdom of the Netherlands, Mr. Bart van Meegen, and the Head of the Commission's Office, Ms. Judith Schoenmakers.

Their kindness and support at every step was extremely helpful. Bartosz Pilitowski would like to thank Attorney Jakub Michalski and Judge Bartosz Łopalewski for their valuable comments on the original versions of the Roadmap. We are also grateful to the Ministry of Foreign Affairs of the Kingdom of the Netherlands for making it possible to conduct the research and issue the report.

About the Publisher

Court Watch Poland Foundation is an independent non-governmental organization that monitors the implementation of the right to a fair and public trial in Poland. The Foundation's mission is to improve the functioning of the judicial system in Poland based on empirical data and objective analysis. The Foundation conducts interdisciplinary research in cooperation with Polish and

international research institutions, develops and implements solutions to improve the implementation of the right to a fair and public trial, and conducts educational activities. The largest research program of the Court Watch Poland Foundation is the Citizens' Courts Monitoring. Within this program over 3,500 Foundation's volunteers have observed more than 55,000 court hearings.





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Cover photo: Caryatid in front of the Supreme Court of Poland [© Agencja Wschód / Forum]

Infographics: Story Visio

Publisher: Court Watch Poland Foundation

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ISBN 978-83-966774-3-3

Toruń 2023

The publication of the report was made possible by the support of the Ministry of Foreign Affairs of the Kingdom of the Netherlands.



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ISBN 978-83-966774-3-3

